Office-Supreme Court, U.S.
FILED
SEP 10 1959
JAMES R. BROWNING, Clerk

No. 391

Vol. VI - Pages 1601-2000

TRANSCRIPT OF RECORD

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 17071

GEORGE B. PARR, D. C. CHAPA, B. F. (TOM) DONALD, JR., JESUS G. GARZA, SANTIAGO GARCIA, OCTAVIO SAENZ, JESUS OLIVEIRA, O. P. CARRILLO, OSCAR CARRILLO, SR., TEXAS STATE BANK OF ALICE, ALICE, TEXAS, and SAN DIEGO STATE BANK, SAN DIEGO, TEXAS,

Appellants,

-versus-

UNITED STATES OF AMERICA,

Appellee

Appealed from the United States District Court for the Southern District of Texas

COURT OF APPEALS
FILED
JUN 2 1958

Alpha Law Brief Co., 402 M & M Building

(Original Record Received _____ 19____.)

EDWARD W. WADSWORTH

they be in the office? Would they be at one or different places from time to time?

A. As far as I remember, I saw them once in Room No. 4 there.

Q. No. 4. That is back where various employees worked?

A. That is right.

Q. Did you also see them sometimes in the vault?

A. I don't remember, sir.

Q. Did you sometimes see them on this counter, this four-foot counter separating what is marked 1 and 2?

A. Well, I don't remember.

Q. Would they also sometimes be in the room marked 6, where the telephone was?

A. That is right.

Q. When they would be at these various places, would they be laying out there where anybody could see them?

A. Yes, sir.

Q. Then anybody who might go in there to use the telephone would have access, if a given check was laying there, to the checks if they were in No. 6, any casual stranger or citizen of Benavides, isn't that true?

A. That is right, sir.

Q. Do you recall on the occasion when you would make the deposit whether or not there was a hundred or more checks wrapped up or given to you with an adding machine tape? Do you recall approximately how many you took the time you took them, about which you testified, going to the Texas State Bank at Alice to make a deposit? Just your best judgment.

A. Well, I should say about—there was a bunch of them. There must have been a hundred to two hundred checks.

Q. Were they handed to you—how, in what manner were they handed to you, Mr. Morin? How did you get possession of the stack of checks? Did you make up the adding machine tape yourself, or were they given to you already made up?

A. They was already made up.

Q. Was the adding machine tape given you in your hand and the checks in the other, or were they in a bundle?

A. It was wrapped in a bundle.

Q. The checks were wrapped around in a long adding machine tape?

A. That is right.

Q. Do you know whether or not there was an envelope or perhaps more than one envelope inside those checks, wrapped in the adding machine tape?

A. I really don't recall about that.

Q. You don't recall whether there was or not?

A. That is right.

Q. Could you have told from the manner in which they were presented to you, without undoing and examining them, whether or not there was such?

A. Could be.

Q. You say you could have told without unwrapping them?

A. Repeat that question, please?

Q. I am asking in the form and manner in which you describe them as having been presented to you, that is wrapped up with a long piece of paper, an adding machine tape, could you, from looking at it, feeling it, without unwrapping it, tell whether there were envelopes in there as well as checks?

A. No, I could not tell.

Q. You could not tell?

A. No, sir.

Q. You don't know whether or not at the time you took the two or three hundred checks and adding machine tape wrapped around it, whether there were envelopes in there containing cash in there or not, do you?

A. That is right.

Mr. Bottler: Your Honor, Mr. Foreman is in the way, and if he is not showing the witness something, we request he take his seat.

Mr. Foreman: I will be happy to keep from between them and the light.

Here is what I really got up to do, Government's Exhibits 33, 31, 32, 30, and 29, these same exhibits with the same numbers, were handed to you at the former trial of this case in November, were they not, Mr. Morin?

A. Yes, sir.

Q. And did you or not at that time testify that you did not recall whether or not D. C. Chapa gave you these checks or not?

A. Well, I said that it looks like my signature at that time.

Q. I'm not questioning your signature. My question is not about your signature, but as to who may have at the Benavides Independent School District tax office handed you these particular checks to go to the bank, to take to the Merchants Exchange Bank. Do you have any independent recollection? I will ask you first right now, do you have any independent recollection as to who gave you any one of these checks you now hold in your hand?

A. No, sir.

Q. Do you know? You do not know whether or not D. C. Chapa gave you these checks or not, do you?

A. No, sir.

Q. Sir?

A. No, sir.

Q. As far as you know, anyone there in the office might have given them to you and told you to go get petty cash with these checks, isn't that true?

A. Yes, could be.

Q. Your best recollection is all we can have. We are not trying to tie you to any one thing. These checks are dated—we will take them in the number in which they are here. 29 is October 28, 1952. 30 is October 23, 1952.

The Court: Are these checks in evidence?

Mr. Foreman: Yes, sir.

Mr. Bottler: Yes, they are.

The Court: Well, I think that is the nature of things that we can avoid taking up time with. These things can be covered in the summary of the evidence when you present your arguments. If you read the date correctly, the witness will say yes.

Mr. Foreman: I will make it one question, if I may.

Isn't it true all of them are dated on or before October 28, 1952?

A. That is right, sir.

Q. Now, who was your supervisor in the office up to the time he left in December of 1952?

A. Diego Heras.

Q. Isn't it true, Mr. Morin, that so far as you know, these checks or any of them may have been given you by Diego Heras, D. C. Chapa, Hilda Chapa Gonzales, or any other person there in the office?

A. That is right.

Mr. Bottler: I believe it is duplicitous.

The Court: Objection overruled.

Q. (By Mr. Foreman) Well, when you brought back the money from any one of these checks, you may have given it to any one of the people who gave you the checks, might you not, as far as your recollection is concerned?

A. I guess so.

Q. And for what—did you ever at any time carry checks, or a check, or any one or more checks in excess of the sum of $500? Did you ever get more than $500 at any one time by carrying checks to the Merchants Exchange Bank at Benavides?

A. Sometimes it is 100, 200, 300.

Q. What was the most at any time you ever got, Mr. Morin?

A. As far as I remember, I believe it was around $500.

Q. Tell the jury whether or not there was a petty cash fund kept in the offices of the Benavides Independent School District for paying small bills, emergency bills of the School District?

A. Yes, they had a petty cash there, sir.

Q. And state whether or not you knew or were told at the time that the proceeds of these checks were for the petty cash fund?

A. Well, now, I don't know about that.

Q. All right. Did you yourself disburse the petty cash when anything might have come collect, or any adjustment on a tax overpayment, or wrongful payment had to be made? Did you have anything to do with the disbursement, the spending of the petty cash, Mr. Morin?

A. No, sir, I did not.

Q. Then, do you know for what uses or purposes the petty cash was expended?

A. No, sir, I really don't know.

Q. When the people of Benavides came to the—where did they pay their home and land taxes?

A. As far as I remember, it was in Room 6.

Q. Did they usually come in person, that is the local citizens of Benavides, to pay the taxes on their property?

A. Yes, sir.

Q. And what were the principal checks coming through the mail, as you have stated? What were they for? What kind of taxes?

A. Well, some were for real estate, I believe, and royalties.

Q. Tell us whether or not among the other employees, those people who worked in the offices of the Benavides Independent School District tax office while you did, were Diego Heras, Romero Gutierrez, Dora May Couling, Hilda Chapa Gonzales, Lydia Oliveira Salinas, Herlinda Chapa, C. L. Oliveira and Exiquio-somebody—

A. Sanchez.

Q. —Sanchez. Did all of those people work there when you did?

A. All of them worked inside there but the last one. He is the janitor.

Q. Now, do you know what Homero Gutierrez did there?

A. Well, the same thing I did, I guess.

Q. State whether or not while he was there and until December of 1952, all of these people worked under the direct jurisdiction and supervision of Diego Heras?

A. Yes, sir.

Q. Now, Mr. Morin, isn't it true that sometimes for days and weeks, and even months at a time, D. C. Chapa did not appear at all in the offices or at the offices of the Benavides Independent School District while you were employed there?

A. That is right.

Q. And isn't it true that when he did come, that usually his visits were limited to a few minutes, or not more than an hour on any given day?

A. Yes, sir. He used to stay there about an hour or an hour and a half, more or less.

Q. Then he would go away, did he not, and remain for perhaps days at a time before he would reappear?

A. Correct.

Q. And meanwhile any problem or any discussion, any instructions that any of the employees required or desired would come from Diego Heras, so long as he was there, is that not true?

A. Yes, sir, that is right.

Q. Isn't it true that Diego Heras would make the decisions when and what checks were to be sent to the bank when he was there?

A. Well, he might have sent somebody else too, because I really don't remember.

Q. Isn't it true that he told you all how to make up

the adding machine tapes, directed the manner in which the tapes would be made on the adding machine, Diego Heras did?

A. As a matter of fact, he told us a lot of things.

Q. As a matter of fact what?

A. He taught us a lot of things in there.

Q. As a matter of fact, it was this same Diego Heras that taught you all not to keep a cash entry book to make an entry in, a bound volume, as soon as a check was received, isn't that true?

A. Repeat that question?

Q. I will first ask you another question. Isn't it true that before Diego Heras came and moved the books in July of 1951, that you all had a cash book in which an entry would be made, recording the receipt of a check in payment of taxes? Do you recall that book?

A. No, sir, I don't recall that.

Mr. Bottler: Is that prior to the time he started working there?

Q. I understood you started in April 1951?

A. 1952.

Q. Oh, April of '52. I am sorry. Of course you were not there prior. I beg your pardon, 1952 and 1953. You are right. I appreciate the correction.

You do not know what the process was with reference to a cash book prior to your coming to work there in April of 1952, do you?

A. No, sir, I don't.

Q. Mr. Morin, was Hilda Chapa Gonzales any relation of D. C. Chapa's?

A. I don't know, sir.

Q. What is your answer?

A. I don't know if she is related to him or not.

Q. Isn't it true there were many many families of Chapas, by the family name of Chapa, in Duval County who are not related to each other?

A. Yes, sir.

Q. This Homero Gutierrez that I asked about while ago, tell us where he lived with reference to the man you mention as Jose or Joe Cadena. Did he live right in back of him, practically in his backyard?

A. Yes, sir, they were neighbors.

Q. What did Joe Cadena do, say, from 1949 up to now? What is his job?

A. He is a teller at the Merchants Exchange Bank.

Q. How many banks are there in Benavides?

A. Only one.

Q. And who is the cashier at the Merchants Exchange Bank of Benavides?

A. Joe Cadena.

Q. Joe Cadena. Well, what is J. M. Cadena? Is that the same as Joe?

A. No, sir, that is his brother.

Q. And what does J. M. Cadena do at the Merchants Exchange Bank?

A. I don't know. I think he is a bookkeeper there, or president of the bank, or something.

Q. President of the bank, and what is Joe Vaello's connection with this same Merchant's Exchange Bank?

A. He is the owner of the bank.

Q. Then Jose and J. M. Cadena work for Joe Vaello at the Merchants Exchange Bank?

A. Yes, sir.

Q. Do you know whether or not Homero Gutierrez —may I have all of the checks offered by the Government? The actual checks themselves?

(Tendered to counsel.)

Do you know whether or not Homero Gutierrez cashed checks with Joe Cadena at the Merchants Exchange Bank sometimes running into thousands of dollars?

A. I don't know how much was the amount, but I recall he went over there once.

Q. He went over once to the Merchants—

A. That I know of.

Q. That Homero Gutierrez went over to the Merchants Exchange Bank?

A. Yes.

Q. Aside from going over to the bank, do you know whether or not he took checks home and gave them to Joe Cadena to be run through the bank?

A. No, sir.

Q. You don't have any knowledge of that one way or the other, do you? He is shaking his head in the negative. Now, Mr. Morin, was there any record kept from April of 1952 until you left in 1953 at the Benavides office, any one book where all checks were entered immediately as received? Was there any cash book or reecipt book by which immediately upon opening an envelope, a check would be show to have been received that day on any given bank for any given purpose?

A. No, I don't know, sir.

Q. Isn't it true that after a batch of checks had accumulated, at some time or other some one of the employees would go to those various tax rolls and clip to the tax statement the check purportedly paying that particular statement as it appeared in the tax roll, so that sometimes there would be a great many of these checks just clipped with a paper clip to the tax roll in the vault, or elsewhere about the office?

A. Well, I never did see anything like that, but they probably had that system of working that way because I never did open those checks.

Q. You have told us about A, B, C, D, and what each applied to and covered. Describe the size and appearance of the rolls, A, B, C, and D. Were they not an expansion of loose leaf, a series of pads about the size of—as the statement was made up, isn't it true that the A, B, C, D lists from which you mailed out the tax statements consisted of about four or five copies remaining in a folder clamped, and that there would be—they would run from two to five or eight or nine inches high, depending on whether it was minerals or royalty interests, isn't that true?

A. Yes.

Q. Then there would, at a given time, be perhaps about four different stacks—be one stack but with a little staple so you could make it as wide, as heavy, as deep as you wanted, isn't that true?

A. Yes.

Q. And they would be about long enough, at any rate, to cover this (indicating), and wide enough, about as wide and as long as those statements?

A. That is right.

Q. And this would have A, B, C, D at the top of each one of them?

A. Yes, sir.

Q. Now, how would the checks as received be handled, with reference to those four books, A, B, C, and D? When and what comparison, or how would the books be used in connection with the checks, the books I have mentioned, A, B, C, and D?

A. Well, as a matter of fact, I never did that kind work, you see. I couldn't explain this in detail.

Q. That is all right. Okay. After he left in December of 1953, where did Diego Heras work in Benavides?

A. Well, he went to work—

Mr. Bottler: May I correct that? I believe counsel inadvertently stated after December of 1953. The testimony is he left in December of 1952.

Mr. Foreman: If I did, it was inadvertent. I did not realize I said 1953.

After he left in December of 1952, where did Diego Heras work?

A. He went to work to a building downtown in Benavides, a two-story building.

Q. Called the Heras building?

A. Yes, sir, that is right.

Q. Do you know H. Q. Heras?

A. Yes, sir, I do.

Q. Do you know his occupation in 1953 and 1952 and 1951?

A. H. Q. Heras?

A. Yes, sir.

A. No, sir, I really don't know.

Q. Did he have anything to do with the City Hall?

A. Oh, yes. He was a city secretary at that time.

Q. Well, were the City Utilities operated by the City of Benavides by H. Q. Heras?

A. Repeat that question?

Q. Did H. Q. Heras have anything to do with the City Utilities of the City of Benavides while he was city secretary?

A. Well, I was not there at that time, but I believe he had something to do with utilities there.

Q. What is your present job? What is your job now?

A. I am the city secretary of Benavides.

Q. You have the same job that H. Q. Heras had before?

A. Yes, sir.

Q. Do you have anything to do with the operation or collection of the bills, or handling of the money of the City Utilities?

A. Yes, sir.

Q. What utilities do you have?

A. Gas, water, and sewer.

Q. What relation is H. Q. Heras to Diego Heras?

A. I believe they are cousins.

Q. Do you know whether or not, in addition to being cousins, they were raised by the same lady practically as brothers?

A. That is what I understand, sir.

Q. Did you ever see H. Q.—I mean Diego Heras with any unusual amounts of money in his—on his person or in his billfold?

Mr. Bottler: Your Honor, we just object to the characterization "unusual amounts of money."

Mr. Foreman: I will rephrase.

Did you ever see Diego Heras with—exhibit his billfold?

A. I did once, sir.

Q. And when and where was that, Mr. Morin?

A. Well, it was in 1952, I believe, in the School District.

Q. In the School District office?

A. Yes, sir.

Q. And what was the occasion for his doing that?

A. Well, I really don't know. He just showed it to me.

Q. What, when he exhibited his billfold, did you see therein?

A. I just took a glance.

Q. Well, what did you see? Could you determine an approximate amount of money, or the size of the bills?

A. No, sir.

Q. And who was present at the time you saw him exhibit his billfold?

A. Only him and myself.

Q. Did any discussion lead up to that, or did he just offer to let you see how much money he had?

A. No, sir, no discussion. He just showed it to me, that is all.

Q. Pulled out his billfold, showed you the money, and put his billfold back in his pocket?

A. That is right.

Q. You hadn't said anything to him at all of how much money he had?

A. No, sir.

Q. In other words, tell us what you saw at the time he did what you testified to?

A. I didn't get that, sir.

Q. Just tell us what you saw, using your own words, on this occasion about which you testified?

A. Well, the only thing, there in the office, I don't know, he just pulled his billfold out and he says, "Take a good look at this."

Q. And what did you—when you got a good look, what did you see?

A. Paper money.

Q. Much or little?

A. Well, I couldn't determine.

Q. Could you tell us about how thick it was?

A. Well, it wasn't very thick. Just good sized.

Q. Good sized. Not very thick. Could you tell us the size or denomination of the bills, whether tens, 20s, 100s, 500s, or a thousand?

A. No, sir, I couldn't.

Q. In addition to the ones I named as employees a while ago, do you recall any other employees who worked at the Benavides Independent School District while you were so employed there, Mr. Morin? I named nine.

A. There was another girl, Bertha Benavides. Now she is Vaello.

Q. Bertha Benavides Vaello. That would make ten. Now, tell us whether or not, in addition to these, there were from time to time, in rush periods, employees brought in to help in the fall with the tax statements or rolls from the high school?

A. Yes, sir.

Q. You don't recall the names of all of those?

A. You mean the ones they hired—

Q. From the high school, yes, sir.

A. Well, I remember one of them. It is Herlinda Chapa.

Q. Mr. Morin, how long did they work the extra help? Did they work week or month, all day every day, or just certain hours?

A. No, they work all day.

Q. And how long normally did the extra employees work?

A. Well, from the beginning of the tax work up to the end.

Q. When did the most of the checks for payment of mineral interests, taxes, arrive at the tax office of the Benavides Independent School District?

A. Well, I don't have an idea, but I believe around October or November, I guess.

Q. Do you recall when Homero Gutierrez carried a bunch of female employees on a vacation trip to Monterrey, Mexico?

A. No, sir.

Mr. Bottler: What was your answer?

A. No, sir.

Q. Do you recall when Homero Gutierrez went to Monterrey, Mexico on a vacation?

A. What year was that?

Q. I'm asking you. I don't know.

A. I don't know either, sir.

Q. You do not recall. Now, when did Homero Gutierrez leave, if you know, the employment of the Benavides Independent School District?

A. Well, he left around—let's see. Around June, I believe, or July of 1953.

Q. Was that before or after you did?

A. Well, that was before.

Q. Now, Mr. Morin, tell us where else besides here last November and this time you have given testimony in connection with these checks, Government's Exhibits 29 through 33?

A. Yes, sir.

Q. Where else, in what other states?

A. I misunderstood you.

Q. Tell us where else, in what other cities have you testified concerning, we will say, the operations of the Benavides Independent School District offices, and specifically these checks bearing your name?

A. No, sir, right here in Houston is the first time—I think the second time, I mean.

Q. Did you testify at Tyler?

A. Yes, sir, but there were no checks involved in that.

Q. Did you testify—whether checks were involved or not, where else have you testified concerning Benavides Independent School District offices besides Tyler and here?

A. Where else, you mean? Fort Stockton.

Q. That is in Pecos County?

A. Yes.

Q. And where else?

A. That is all.

Q. Did you testify in New Braunfels?

A. I don't think I testified up there, sir.

Q. Did you ever see Diego Heras around the Benavides Independent School District offices in 1953?

A. No, sir.

Mr. Foreman: That is all, Your Honor.

5-1219 REDIRECT EXAMINATION

Q. (By Mr. Bottler) Did anyone other than D. C. Chapa make a practice of sending you to the Merchants Exchange Bank with taxpayers' checks?

A. I only recall one occasion Diego Heras sent me.

Q. Do you think that happened on more than one occasion?

A. No, sir, I don't think so.

Q. Apart from that, do you remember anyone sending you to the Merchants Exchange Bank with any taxpayers' checks to get them cashed?

A. No, sir, I really don't.

Q. Were the ten employees that you testified worked at the school district office while you were there, did those ten employees work during all the time you were there, or did some of them come and some of them go?

A. Well, they used to be there, you know, to help us out until the job was completed, you know.

Q. Who were the regular people who were there winter, spring, summer and fall while you were there?

A. Well, myself and Dora May Couling, and Homero Gutierrez, and Lydia Oliveira, and Bertha Benavides Vaello. That is about all.

Q. Was Hilda Chapa Gonzales there all the time?

A. That is right.

Q. Was Velia Oliveira there all the time?

A. That is right.

Q. Did she work under Oscar Carrillo or under Diego Heras?

A. That I don't know.

Q. Where was her office? Where did she stay during the entire time you were there? Where was her desk?

A. In Room 5.

Q. Where did Hilda Chapa Gonzales stay?

A. Room 6.

Q. And where did D. C. Chapa stay when he would come there?

A. No. 6.

Q. Where did you work?

A. I work in No. 4.

Q. Would you know whenever someone would come in and go to Room 6, for example? Were you bound to know if such a person came in there or not?

A. By the echo.

Q. What?

A. By the echo, I guess, of the footsteps. Something like that.

Q. Could you tell by the footsteps who was coming in and going?

A. No, sir.

Q. Do you have somebody else working with you at the City Utilities?

A. Yes, sir.

Q. Did not H. Q. Heras, at the time he was city secretary, have somebody else working with him at the City Utilities?

Mr. Foreman: I object. It is leading and suggestive.

Mr. Bottler: Yes. Counsel went into a matter not gone into by the prosecution on direct, and—

The Court: What matter was that?

Mr. Bottler: That H. Q. Heras was the city secretary, and operated the City Utilities.

The Court: I will permit the Government to propound leading questions concerning that matter or any other matter raised originally by the examination of defense counsel.

Mr. Bottler: Would you read back the question, please?

The Official Reporter (Reading): "Question: Did you have somebody else working with you at City Utilities? Answer: Yes, sir. Question: Did not H. Q. Heras, at the time he was city secretary, have somebody else working with him at the City Utilities?"

A. There was another fellow working there in the office with him.

Q. Who was he?

A. Romero Salina

Mr. Bottler: No further questions.

5-1222 RECROSS EXAMINATION

Q. (By Mr. Foreman) Tell us what relation Romero Salinas is to Diego Heras?

A. He is first cousin, so far as I know.

Q. With reference to these signatures "City Utilities by H. Q. Heras," on Government's Exhibit 18, a check payable to Espirideon Martinez, the H. Q. Heras signature under City Utilities on Government's Exhibit 19, a check payable to Francisco Carrillo, the H. Q. Heras signature appearing on Government's Exhibit 20, a check payable to Francisco Sanchez on Government's Exhibit 20—

Mr. Bottler: Your Honor, the Government will object to counsel reading the checks which are in evidence for the reason that the checks themselves are the best evidence.

Mr. Foreman: May I ask my question first, please?

The Court: You may.

Q. (By Mr. Foreman) Will you tell us whether or not these signatures are the signatures of Salinas or the signa-

tures of H. Q. Heras, if you know the signatures? Do you know the signatures, first?

A. I have seen Salinas' signature, but this is not it.

Q. Is this H. Q. Heras' signature?

A. I cannot say that either.

Q. Does Salinas work with you now?

A. Yes.

Mr. Foreman: May I pass these to the jury?

The Court: Very well, sir.

Q. (By Mr. Foreman) Isn't it true any time Mr. D. C. Chapa was at the offices of the Benavides Independent School District on the occasions he might come there, everybody knew when he was there?

A. Yes, sir, that is right.

Q. And when he would leave, you all would likewise know when he had left, didn't you?

A. Oh, yes, sir.

Q. Isn't it true that Oscar Carrillo was a rancher in 1952 and 1953, and frequently was away from the office for days at a time?

Mr. Bottler: Your Honor, I believe he is going beyond the scope of redirect examination.

Mr. Foreman: He asked as to who was there, Your Honor, and as to how much he wasn't.

Mr. Bottler: I withdraw the objection. I think counsel is correct.

Q. (By Mr. Foreman) Isn't it true that Oscar Carrillo was only there a small part of the time?

A. I remember he used to go out to the ranch, and wouldn't come back for a long time, and he stayed there a little while.

Q. Sometimes there would be days when he wouldn't come in, isn't that true?

A. That is right, yes, sir.

Q. And isn't it true from November 15, usually for 30 days, D. C. Chapa was never seen? He was off for the 30-day deer season all the time?

A. Yes, sir, that is right too.

Q. And isn't it true that he followed the game season sometimes on through December and up until the 1st of January?

A. Yes, but only if he used to come week ends, or something like that. He will show up there a little while and go again.

Q. Tell us Oscar Carrillo's habits with reference to November 15 until the end of the deer season? Isn't it true that he too was frequently away for the whole deer season, following it county to county for six weeks, starting November 15, that is right, isn't it?

A. Yes.

Mr. Foreman: That is all, Your Honor.

5-122 REDIRECT EXAMINATION

Q. (By Mr. Bottler) Did D. C. Chapa come back for the week ends during the deer season?

A. I recall occasionally he used to come.

Q. Now, during the years 1952 and 1953, was Romero Salinas associated with the defendants in any way?

A. Repeat that question again?

Q. During the years 1952 and 1953, was there any connection between Romero Salinas and any of the defendants in this case?

A. No, I don't think so.

Q. Did D. C. Chapa and Oscar Carrillo—were they good shots or poor shots hunting?

A. I guess they were good shots.

Mr. Foreman: It is duplicitas. I have been hunting with both of them, and one is a good shot and one is a bad shot.

The Court: What is the relevancy of the question?

Mr. Bottler: How long it would take him to get his limit.

The Court: Is that material?

Mr. Bottler: Yes, Your Honor. If he had to go a short time to get his limit, there would be no purpose in staying.

The Court: You don't want to try these men for violating the hunting law?

Mr. Bottler: They introduced the evidence. We want to establish the probability or nonprobability of their staying absent during deer hunting season.

The Court: I suggest that not be pursued further, about deer hunting.

Mr. Bottler: No further questions.

5-1226 RECROSS EXAMINATION

Q. (By Mr. Foreman) Isn't it true throughout the time you worked at the Benavides Independent School District that the Carrillos and the Chapas entertained people from various places in Texas, and throughout southwest Texas, at a hunting lease in Webb County where they were the hosts? You know whether that is true or not, where there were 30 or 40 people visiting for which these men were responsible as hosts?

A. No, I do not.

The Court: I believe there is testimony that both these defendants were absent from the office in the middle of November until the end of December, and I don't think we have to go into it to justify why. We do have testimony that they were.

Mr. Foreman: That is all from us, Your Honor.

The Court: I think we should abandon the hunting trips.

Mr. Bottler: That is all.

The Court: Very well. You may step down.

Court is recessed until 1:45.

AFTERNOON SESSION—MAY 15, 1957

The Court: Be seated, please.

Mr. Bottler: Your Honor, we would like for the Clerk to mark as Government's Exhibit the plat of the School District office concerning which Mr. Morin was interrogated.

(Plat of School District office, mounted on easel, marked by the Clerk as Government's Exhibit 209.)

Mr. Bottler: We offer Government's Exhibit 209.

Mr. Foreman: We have no objection.

The Court: It is admitted. The Government may call its next witness.

6-1228 R. R. GONZALES,

a witness called in behalf of the Government herein, having been first duly sworn on oath, testified as follows, to-wit:

6-1228 DIRECT EXAMINATION

Q. (By Mr. Wilkey) State your name, sir?
A. R. R. Gonzales.
Q. Where do you live?
A. Benavides, Texas.

Q. How are you employed?

A. I am employed by the Benavides Independent School District.

Q. In what capacity?

A. Tax assessor-collector.

Q. How long have you held that office?

A. This coming June, it will be two years.

Q. In response to a subpoena, did you bring to this court house on this and a previous occasion certain records of your office?

A. Yes, sir.

Q. Are they records of which you are the official custodian?

A. Right, sir.

Q. I will first show you Government's Exhibit 35, and ask you if you can identify this?

A. Yes, sir, this is the 1952-1953 tax roll.

Q. All right, sir. What roll does that include, with reference to the A, B, C, D, rolls?

Mr. Foreman: What year did he say, please?

A. 1952 and 1953, the real estate and oil companies renditions.

Q. What portions of the rolls for 1952 does it include there?

A. All of it.

Q. All of 1952?

A. Yes.

Q. And how much of '53? What portion of 1953 is included in that volume?

A. If I remember right, there is all of it here too.

Q. Would you take a look, please? We can put it on the

end of this desk and let you look here, as it is a heavy volume.

Mr. Foreman: May it please the Court, the witness having testified that he only went to work in the School District office in June of 1955, two years ago, we submit that he could not authenticate the completeness or lack of completeness of the rolls for the year of 1952 or 1953. I have no objection to his testifying that those were the records turned over to him by some of the intervening tax collectors and assessors between him and D. C. Chapa, or whoever turned them over to him.

The Court: His testimony is that he is the tax assessor-collector?

Mr. Foreman: Yes, sir, but only for—

The Court: I undersand that, but as tax assessor-collector, he is custodian of all of the records of that office, which would include the records made by his predecessor in office.

Mr. Foreman: Granted. That is not our point. Our point is he is testifyingthat these are all of the records. As to their being such records—we grant he is the proper person to introduce those offered, whatever records were turned over. May I have him on voir dire to establish his lack of knowledge of the 1952 and 1953 records?

The Court: You may have him on voir dire to establish his knowledge or lack of knowledge, whatever it may reveal.

Mr. Wlkey: Your Honor, I would like to ask him a few more questions about this to establish his custodianship of them.

The Court: Very well. I suggest that be done.

Q. (By Mr. Wilkey) Take the stand, please, Mr. Gonzales.

(Witness complies with counsel's request.)

Mr. Gonzales, were these part of the records which you took custody of when you assumed office?

A. That is right.

Q. Were you subpoenaed to bring with you the tax rolls for the years 1952 and 1953?

A. Yes, sir.

Q. All right, sir. Now, you yourself did not have anything to do with the preparation of that 1952 roll, did you?

A. That is correct.

Q. Or the 1953, either, for that matter?

A. No, sir.

Q. All right. I show you what has been identified as Government's Exhibit 34 here, and ask you what this is?

A. This is a photostat copy of the 1953 tax rolls.

Q. All right, sir. Have you had an opportunity here in this court house to compare page-by-page that photostat with the original 1953 tax roll?

A. Yes, sir.

Q. Were these two volumes here, the one you hold on your lap and the one on the table, 35 and 34, the only tax

rolls entrusted to your custody for the years 1952 and 1953 when you took charge of the office?

Mr. Foreman: May it please the court, we object. Every question has been leading and suggestive and contradicting the witness' testimony.

The Court: I will agree they have been of a leading nature, and instruct counsel not to lead the witness, and the witness will be subject to cross examination.

Mr. Foreman: We want to point out, Your Honor, unless that is a photostat of this, the District Attorney is intervening and answering his questions for him contrary—

The Court: I sustained that objection and instructed counsel not to lead the witness.

Q. (By Mr. Wilkey) Mr. Gonzales, what is the relation, if you know, between the portion of the 1953 which is included in Exhibit 35 here, and Exhibit 34, which is a photostat of the 1953 rolls?

A. When I compared this, they were the same as the tax roll, the original tax roll.

Q. Let me ask you, did you compare what you have in your lap with this book here, or did you compare it with a different book, the original 1953?

A. The original 1953.

Q. Was that done here in this court house?

A. Yes.

Mr. Foreman: We submit, Your Honor, whatever he

compared it with ought to be here before us for examination, and not some other place in the court house.

Mr. Wilkey: May we approach the Bench?

The Court: You may, sir.

(The following proceedings were held at the Bench out of the presence and hearing of the jury.)

Mr. Wilkey: The original tax roll which he compared in this court house was a tax roll in the custody of the clerk of the Court of Criminal Appeals. It was objected to by the defense that they did not want the fact that the original roll was in the custody of the Clerk of Court of Criminal Appeals to come before the jury, therefore the Clerk of the Court of Criminal Appeals was subpoenaed and brought that roll over here, and Mr. Gonzales compared the photostat page by page with it. He did not compare it with the other exhibit which is now before him. He can explain, and I can put questions to him, that he compared it with the roll that was in the custody of that Clerk.

The Court: Can you explain the absence of the original record?

Mr. Wilkey: Only by the fact that it is in the custody of the Clerk. We can do it, but defense counsel objected to it in the last trial.

Mr. Foreman: I am not objecting to this as a photostat, no, sir, nor am I objecting to it as a certified copy of what the roll is, but I am objecting to the man testifying the '52

and '53 rolls are complete in that book, which is not true.

The Court: He may be subject to cross examination.

Mr. Foreman: But the District Attorney leads him and suggests.

The Court: If I understand, you object to leading questions.

Mr. Foreman: And he is going right back to the same factor when he suggests something contrary to what the witness testified, which is he has compared it with something else besides this book. Those only show the jury the lack of familiarity of the witness with his record. That is what we are intending to emphasize. We are not intending to compel the summons of the original record again. We know what Mr. Wilkey is saying is true as far as the facts are concerned. It is the matter of the handling of the witness we are objecting to.

Mr. Wilkey: The matter is covered by stipulation as to the accuracy of Exhibit 34.

Mr. Foreman: We are not questioning the accuracy. We are questioning the right of the District Attorney, after the man stated all the records are in that book, he is saying, did you compare it with something else.

Mr. Wilkey: I would like permission to read the stipulation to the jury.

Mr. Foreman: I am not questioning the stipulation.

The Court: Let me ask this question, if I may have the attention of everyone. Do I understand that the bound pages of photostats may be received just as though they were the original copies—

Mr. Foreman: When he identifies them, yes, Your Honor, either by this witness or anybody else, but not by Mr. Wilkey identifying them and saying they are and correcting this man's testimony.

The Court: Do I understand you are not objecting because they are photostats?

Mr. Foreman: Absolutely not.

The Court: And if the originals were here, would your objection be the same?

Mr. Foreman: Yes.

The Court: Very well. Let's proceed in that manner, and if that be the case, if we don't have to refer to the originals, then we don't have to explain where the originals are, and your objections and answers to the objection can be made to the jury, in the presence and hearing of the jury.

Now, I will take a look at this.

Mr. Foreman: He is correct in our stipulating those may be received. I have never repudiated it or undertaken to do so.

Mr. Wilkey: I will ask permission to read this first paragraph to the jury?

The Court: I don't think it is necessary.

Mr. Foreman: It isn't. All that would amount to—

Mr. Wilkey: I think it is necessary to clarify this, or the Court can read it.

Mr. Foreman: I don't think it is evidence. It is up to him to identify this by someone who knows it is a copy.

The Court: I don't think it is necessary, and we are proceeding just as though these photostats, which are Government's Exhibit 34, were the originals.

Mr. Foreman: That is all right.

Mr. Wilkey: That is right.

(The following proceedings were had in the presence and hearing of the jury.)

Q. (By Mr. Wilkey) Mr. Gonzales, you were subpoenaed to bring the tax rolls of 1952 and 1953. What did you bring with you?

A. 1952 and 1953. Not the originals.

Mr. Foreman: I didn't catch that answer, please. Would you read it back to me, little lady?

The Official Reporter (Reading): "Answer: 1952 and 1953. Not the originials."

Q. What, physically, did you bring with you? Could you indicate what you brought with you?

A. The tax rolls?

Q. Yes.

A. No.

Q. What have you got in your lap there?

A. This is the photostats.

Q. When you were subpoenaed for the 1953 tax rolls, did you bring with you what you have in your lap there, or did you not?

A. No, sir, not this photostat.

Q. Not that photostat. All right. Did you bring with you the volume on the table there?

A. Let's see. I know that the tax roll I compared with this photostat was supposed to have been with the Supreme Court, and the Clerk brought it here and the Court had me compare it.

Mr. Foreman: May it please the Court, that is not responsive.

The Court: It is not, and the jury is instructed not to consider the answer.

Q. All right, sir. Mr. Gonzales, let's get at it this way.

The Court: I want to instruct the witness, when a question is asked, direct your answer to the question asked and your answer should be responsive, and you should not volunteer any information that is not asked for by the question.

Q. (By Mr. Wilkey) All right, sir. Would you look

at the tax roll there, which is on the table, putting aside the roll you have in your lap there, and tell us what is in that roll on the table there, 35?

A. That is the 1952-1953 tax roll.

Q. Would you go through from the beginning and tell us what it covers, that is in relation to rolls A, B, C. D, and what rolls A, B. C, and D are?

A. Well, 1952 is tax roll C, D, and that is all. 1952.

Q. For what year is that, sir?

A. 1952.

Q. Tax rolls C and D for 1952?

A. Yes, sir.

Q. Now, then, for 1953, what does that cover?

A. Tax rolls B, A—

Mr. Foreman: Is he answering?

Mr. Wilkey: B and A.

A. And the supplemental roll S.

Q. What is roll S?

A. The supplemental. That is all it covers.

Q. All right. Now, then, you said rolls A, B, and S for 1953 are in that volume?

A. Yes.

Q. What is in the photostat volume there?

A. The 1953 tax roll, 1954, 1953—supplemental for 1953.

Mr. Foreman: Did you say supplemental for 1953?

A. Yes, sir. Roll A, roll B.

Mr. Foreman: I got supplements for 1953 and roll A and roll D. Is that right, little lady?

The Official Reporter: No, B as in Baker.

The Court: Is the jury having any difficulty hearing Mr. Gonzales?

When you answer, will you speak out clearly because the jury is behind you, and it is difficult for them to hear.

A. And roll C of 1953, roll D for 1953. That is all.

Q. All right, sir. Now, what are Rolls C and D? What do they cover in regard to whether it is—

Mr. Foreman: Pardon me, Mr. Wilkey. I am confused here. Maybe I have got my B and D mixed. The ones on the table, the yellow things, contain 1952 C and D, 1953 B and A, and supplement. That photostat likewise contains A and B for 1953, the same as in the original, and also C and D for 1953?

Mr. Wilkey: Yes, that is correct, and I think your question in regard to A and B being in both is explainable by a portion—

Mr. Foreman: If I am incorrect, we will let him explain it. I would rather have him explain it. I wanted to make sure I had his answers right.

Mr. Wilkey: You have his answers right.

A. Roll C is oil interests. Roll D is also oil interests.

Q. (By Mr. Wilkey) Now, then, see if we have this correct. The 1952 rolls C and D is in that big volume on the table, and the 1953 C and D is in the photostat, is that correct?

A. That is correct.

Q. Now, then, at the time that you were subpoenaed to bring the 1952 and 1953 rolls, state whether or not, and just confine your answer to this question specifically, state whether or not you were at that time in possession of the 1953 roll C and D?

A. No, sir, I didn't have them.

Q. You did not have them. Had you been in possession of them before?

A. Yes, sir.

Q. You had. All right, sir. Now, here in Houston in November or December of 1956, did you have an opportunity to compare page-by-page that photostat, Exhibit 34, with the 1953 tax rolls C and D which you had previously had in your possession?

A. Yes, sir.

Q. You did make that comparison?

A. Yes.

Q. Is that Exhibit 34, the tax rolls C and D for 1953 a true and accurate copy of the original roll which you compared with it?

A. Yes, sir.

Q. All right. Did you also, in response to a subpoena, bring with you the canceled checks and bank statements of the Benavides Independent School District?

A. Yes, sir.

Q. Did that subpoena direct you to bring with you the canceled checks and bank statements for the years 1949, 1950, 1951, 1952 and 1953?

A. Yes, sir.

Q. What portion of the checks--

Mr. Foreman: May it please the Court, I am objecting to whatever his subpoena directed. I have no objection to what he brought or didn't bring, but that is something prepared by the prosecuting attorney.

The Court: I will sustain the objection.

Q. (By Mr. Wilkey) What canceled checks and bank statements did you bring with you for the year 1953?

A. I brought the 1953 and the 1954.

Q. All right, sir. Did you have in your possession any canceled checks or bank statements for the year 1952?

A. No, sir.

Q. Did you have any for the year 1951?

A. No, sir.

Q. Did you have any for the year 1950?

A. No, sir.

Q. Did you have any for the year 1949?

A. No, sir.

Q. What is the earliest date in the year 1953 of the bank statements and checks which you have in your possession? Did you produce, sir, all of the 1953 bank statements and checks? Is there another box of this material?

A. Yes.

Q. All right.

We should have that in the courtroom too, Your Honor. Would you go with Mr. Freeman here to get that?

A. Yes.

(Short interval.)

A. This is the 1953.

Q. Are they all the checks of 1953 which you have?

A. Yes, sir.

Q. I hand you what has been identified as Government's Exhibits 107, 108, 109-A, B, C, D, E, F and G, and ask you if you recognize those?

Mr. Foreman: B, C—is there a D and E there?

Mr. Wilkey: A through G. What are those, sir?

A. Checks.

Q. Of the Benavides Independent School District.

A. Yes, issued by the Independent School District.

Q. Did you or not produce those in court in November and December 1956 in response to a subpoena?

A. Yes, sir.

Q. Are they part of the official records of your office?

A. Yes, sir.

Q. Were they at that time part of the checks there for 1953 which you have pulled out, and are now on the table?

A. That is right.

Mr. Wilkey: Your Honor, we offer in evidence at this time Government's Exhibits 108 and 109-B through G. Government's Exhibit 107 and 109-A are already in evidence.

Mr. Foreman: Your Honor, we would like to know for what purpose those are offered. They appear to be—there is no allegation that would acquaint us with the purpose for which they might be offered, and we would like to know what counts the Government contends they pertain to, as to what defendants he is offering them. They are just a couple of checks, by the same token, as far as we are concerned. May we approach the Bench so as to ascertain that? If he is just offering them because they are checks?

Mr. Wilkey: I could make a statement from here as to—what I have made before. Your Honor, we offer Exhibit 108, being a check payable to Matilde Garza, but

we offer that on the general scheme and artifice to defraud, and we are offering on all counts as against all defendants triable on whatever counts they are, and we are offering the Exhibit 109-B, being a check to Reynaldo Chapa, and the other check 109-G on the scheme and artifice to defraud, to show who was signing the regular checks of the Benavides Independent School District at the time those checks and Exhibits 107, 108 and 109-A were issued. We are not offering all the rest of these, although they may be offered if counsel desires, but we offer these merely as a sample of the checks being issued at that time.

Mr. Foreman: May it please the Court, the proffer on the part of the prosecution suggests that only these insofar as showing who signed these checks—we do not think that that would show who might have signed some other checks. The prosecution asks that the conclusion be drawn because certain checks were signed by certain people at certain times, that all checks were signed in that manner, and that is a presumption and an assumption, and contrary to the presumption of innocence part of our law. By the statement that he is only offering 108, 109-A through G, to show who was signing checks, he admits in effect those checks have no probative force whatever except to show who signed those particular checks. We suggest it might be well for our prosecuting attorney to take the presumption everything points to evil intent and against innocence—that is not the law, and he hasn't any right to introduce other checks as evidence some other checks he charged in those annual reports might be signed by some such person. That is

the burden of these. He offers to show who signed the checks. He hasn't any assumption for it, and he is asking other people to become prosecuting attorneys with the same kind of a man.

Mr. Wilkey: Yes, Your Honor. Your Honor, they are offered on the general issue alleged in the indictment of who was in control and authority in the school district during the period covered by the mail fraud in the first 19 counts, and the conspiracy in the 20th count.

Mr. Foreman: I don't think there has been any, and I don't think there will be any contention, anybody didn't hold any given office at any given time that might be testified to. He is talking about now who is in authority, and asking whoever is in authority be assumed the same people signed all checks including some he hasn't produced up to this good hour.

The Court: You say you do not think there will be any contention certain people will not be officers at any certain time. Do we have a stipulation to that effect?

Mr. Foreman: The best evidence as to who was authorized to sign checks at a given time would be the authorized slip or signature card at the bank, not the fact that somebody signed certain checks, and Your Honor, there hasn't been any denial as to who was on the school board. We have proved it several times. They have proved who was collector-assessor, and who was secretary, and we haven't any proof to the contrary.

The Court: I am lost as to what was said about identification of these exhibits, and I do recall the witness, in

a question from Mr. Wilkey, says, "Are these the checks you were subpoenaed to bring here," "Yes, sir." Of course, that is material. That is the means of getting them here. Otherwise, what is the identification, the testimony as to identification?

Mr. Wilkey: Your Honor, the witness identified these checks we are now offering as being part of the checks for 1953 which he had previously brought here, those which I hold in my hand being all the other checks.

The Court: The official records of the office of the tax collector of the Benavides Independent School District.

Mr. Wilkey: Yes, sir.

The Court: You also stated that those checks are offered on the general scheme and artifice to defraud. Do I understand they are so offered?

Mr. Wilkey: Yes, sir, and I would also point out it is important and desirable to establish not only who was authorized to sign checks, but who actually did sign checks, and that is best done by the checks themselves.

The Court: The objection is overruled. Government's Exhibits 108 and 109-B through G are admitted in evidence.

Q. (By Mr. Wilkey) Do you know a Matilde Garza, Mr. Gonzales?

A. No, sir, I don't.

Q. How long have you lived in Duval County?

A. Fifty years.

Q. Do you know an Amelia Canales?

A. Amelia Canales, yes. There was an Amelia Canales, but she has been married for 12 or 15 years.

Q. What is her married name?

A. Amelia Canales Barrera.

Q. Do you know a Mrs. C. L. Carrillo?

A. C. L.? I don't think so, no sir.

Q. Do you know a Reynaldo Chapa?

A. No, sir.

Q. May I have—do you know an R. Chapa?

A. Could be Reynaldo.

Q. Do you know Hilda Chapa Gonzales?

A. Yes.

Q. D. C. Chapa?

A. Yes.

Q. Do you know A. L. Valerio?

A. I have heard of him.

Q. I have asked you about Reynaldo Chapa. Now, with reference to the records of your office, do you receive any correspondence or letters of transmittal from taxpayers accompanying checks in payment of taxes?

A. I do.

Q. What do you do with those letters of transmittal from the taxpayers which accompany the checks in payment of taxes?

A. We destroy them, throw them in the wastebasket.

Q. Are there, at the present time, any records in your office containing letters of transmittal to the Benavides Independent School District which accompany checks of the taxpayers?

A. No, sir.

Q. Any for the years 1952 and 1953?

Mr. Foreman: Your Honor, the witness has such a soft voice, I cannot hear him.

The Court: I will again remind the witness, keep your voice sustained so everyone can hear you.

A. All right, sir.

Q. (By Mr. Wilkey) Mr. Gonzales, do you have, among the records of your office, division owner reports or ownership lists of taxpayers which are furnished you by an outside agency?

A. Yes, sir, I do.

Q. Who furnished those?

A. Thomas Y. Pickett.

Q. Could you produce the material for the year 1952 in relation to taxes which is furnished you by Thomas Y. Pickett?

A. I think I have the list here, the 1952 ownership list, for the year 1952 only.

Q. May I have them, please? That is A to L and M to Z for 1952?

A. Yes.

Q. Are you furnished also inventory sheets for each individual taxpayer?

A. Yes, sir, renditions.

Q. All right, Do you have those?

A. Yes, sir.

Q. Those for 1952 first.

A. Those are for 1953, all of them.

Q. All right, sir. Those are for 1953. We will get to those in a minute. Do you have the 1952?

A. No, sir.

Q. You don't have them for 1952. Do you have for 1952 an alphabetical list of taxpayers?

A. Yes, sir.

Q. May I have them please? From what source is this obtained?

A. Mr. Thomas Y. Pickett.

Q. That is for what year?

A. 1952.

Q. I will ask you whether or not the rendered property is listed separately from the unrendered on the list?

A. Yes.

Q. Are the taxpayers arranged alphabetically under rendered and alphabetically again under unrendered?

A. Yes, sir.

Q. Do you have a list like this for the year 1953?

A. I couldn't find that.

Q. Did you make a search of your records?

A. Yes, sir.

(Document tendered to the Clerk and marked Government's Exhibit 210.)

Q. Now, for 1953, I have asked you about this. Now, do you have records similar to this, the division owner reports for 1953?

A. No, sir, they were not in the office.

Mr. Foreman: Your Honor, this and this will look like that when they get in the record. I suggest they be identified other than just marked.

The Court: As they are referred to, they should be marked for identification.

Mr. Wilkey: I will ask the Clerk to mark for identification—I don't think it will be necessary on these divi-

sion owner reports. Do you have any division owner reports for 1953?

A. No, sir.

Mr. Foreman: They've not been called division reports before. Are they that or ownership lists?

A. Ownership lists.

Mr. Wilkey: Very well. Call them ownership lists.

Mr. Foreman: They are marked ownership lists.

Mr. Wilkey: I believe they are referred to as both, Your Honor.

The 1953, do you have the inventory sheet for each individual taxpayer?

A. Yes, they are here.

Q. Would you put them up here, if you will?

Now, those refer to real estate, do they not? Those are recorded on either the A or B tax roll?

A. Yes.

Q. This right here, what do they refer to?

A. Unrendered lists.

Mr. Foreman: If there is any further reference to those, we would like them marked.

Mr. Wilkey: There will be no further reference, to my knowledge, to those.

The Court: Very well.

Q. (By Mr. Wilkey) Now, in reference to these individual sheets, what are those?

A. The rendered for 1953.

Q. Do you also have the unrendered for 1953?

A. No, sir.

Q. They are not in your records?

A. No, sir.

Mr. Wilkey: Your Honor, we will be referring to these as rendered oil records for 1953. They are, at the present time, tied together with a string. We will be asking about them. There are a number of sheets here. I would be content to have them marked as a group with simply one number. If desired, they could be marked A, B, C, D and so on for each sheet.

The Court: For the time being, they will be given one number as a bundle or group. If it becomes necessary to identify each sheet individually, we will do it.

(A "bundle" of documents tendered to the Clerk and marked Government's Exhibit 211.)

Mr. Wilkey: I do not believe we have offered in evidence Exhibits 34 and 35. We do so at this time, Your Honor.

The Court: Is there objection?

Mr. Foreman: We have no objection to 34 insofar as it is a photostat copy, Your Honor. To 35, we object that the proper predicate has not been laid nor authen-

ticated as complete lists. This man has not shown a knowledge of whether or not they are complete. He has only testified all he could testify, that they were there when he took over.

The Court: I think his testimony is that they are official records of his office in his official custody, isn't that correct?

Mr. Foreman: Yes, sir, but he is not testifying—has not testified that they were complete. He doesn't know, and he couldn't know.

The Court: He could testify if he is familiar with what he has in his office. He can testify whether or not they are complete rolls for the year or years they purport to be. He can testify whether he has in his office any others.

Mr. Foreman: I agree with that, Your Honor, but as to whether they are complete, I don't agree because he can't fix them. I agree he can state they are all he has.

The Court: He hasn't stated he can tell they are all the records that have ever been made, but I believe he is qualified to testify they are all the records of that character in his custody.

Mr. Foreman: I would like, before the Court permits them into evidence, to establish what his information is in that regard.

The Court: You will be permitted to do that.

6-1256 VOIR DIRE EXAMINATION

Q. (By Mr. Foreman) Mr. Gonzales, I believe you took office in June, 1955?

A. Yes.

Q. And preceding you, who was the last tax assessor-collector?

A. Mr. Samuel Garcia.

Q. And besides him, if your records reveal or if you have knowledge, who was the last preceding tax assessor-collector?

A. Mr. V. L. Sewell.

Q. State whether or not in between Mr. Sewell and Mr. D. C. Chapa, there were some other intervening assessors?

A. Not according to our records.

Q. Wasn't there? Wasn't there a period when there was no tax assessor-collector?

A. I don't know.

Q. Did you yourself work on these in 1952 and 1953, Exhibits 34 and 35?

A. No, sir.

Q. You have no knowledge as to whether it is the complete records for those years as they existed in 1952 and 1953, or not?

A. I do not know, sir.

Q. The only thing you are undertaking to testify is, among other masses of data material, those were left there, and when you testify that—or, testify to what they are, you only testify what the pages purport to show?

A. The records that are in the office, yes, sir.

Mr. Foreman: I guess my objection would go to the weight rather than admissibility.

The Court: I think it would, and Government's Exhibits 34 and 35 are admitted in evidence.

6-1257 DIRECT EXAMINATION (Continued)

Q. (By Mr. Wilkey) I hand you what has been identified as Government's Exhibit 48, and ask you if you know what that is?

A. This is a tax receipt issued on September 10, 1953.

Q. All right, sir. Now, then, how is that tax receipt keyed into the tax rolls from the Benavides Independent School District?

A. Well, as the tax receipt is issued, the tax roll is credited with the amount of taxes paid.

Q. All right. Now, then, how would you find the place in the tax rolls where this property shown on tax receipt, Government's Exhibit 48, where would you find—how would you find in the tax roll how that is listed?

A. Roll number and page number, in this instance roll C, page 12, line 8.

Q. All right. Roll C, page 12, line 8. All right. Would you take Exhibit 34, the 1953 roll and turn to roll C and see if you can find that?

A. Page what?

Q. Roll C, page 12, line 8. Look both places, roll C and roll D. What do you find on line 8?

A. Line 8 is R. E. Smith.

The Court: If you are testifying for the record, speak loud enough so everyone on the jury can hear you. Your back is to them, and you will have to speak out louder.

A. Line 8 shows R. E. Smith.

Q. On this Exhibit 48, who is the taxpayer listed?

A. Texas Consolidated Oils.

Q. To be sure we haven't misread roll C, would you look in roll D, page 12, and see if you can find Texas Consolidated Oils there?

A. Roll D, line 8—that is William E. Billings.

Q. While you are on that page, page 12, look up and down and see if you can find Texas Consolidated Oils on any line?

A. No, sir.

Q. Look on the other page 12 or roll C where we first looked.

A. I have.

Q. On any line there?

A. Not D or C.

Q. Neither place. Thank you. Now, I show you what has been identified as Government's Exhibit 56-B, a tax statement to Sid Katz and ask you from the index system here at the upper lefthand corner, where would you expect to find that in the 1953 tax roll?

A. Roll C, page 20, line 3.

Q. Will you look on page 20, line 3 and see what you find?

A. On roll C, page 20, line 3, it looks like Martela Peale.

Q. Not Sid Katz?

A. No, sir, not Sid Katz.

Q. Look up and down the other lines on page 20, and see if you find Sid Katz or any Katz?

A. No, sir, there are not.

Q. Now, then, Mr. Gonzales, to get this system here clear, when this check for $1,347.98 from Sid and Meyer

Katz came in for payment, on this tax receipt, where would the person handling the tax roll for 1953 look to credit this tax payment?

Mr. Foreman: Your Honor, I have no objection to his testifying to anything he knows about the books, if he knows about them, but they were kept before for two years before he took office, and I do object to this witness testifying. We should come to someone who has worked on and is familiar with the books at that time.

The Court: As official custodian, I think he can testify what they reveal.

Mr. Foreman: The question is what somebody would have done on a payment made in 1953.

The Court: I will sustain the objection.

Q. (By Mr. Wilkey) Mr. Gonzales, when taxes which are now delinquent, and which were not paid in the year 1953 are paid, what do you do with them?

A. We credit the tax roll.

Q. What tax roll do you credit?

A. Well, if that receipt refers to roll C, page 20, line 3, you would go to it.

Q. I will ask you if, at the present time, you are still from time to time receiving payments of taxes for back years?

A. We are.

Q. And when you receive those payments, what do you do?

A. We credit the payment on the tax roll.

Q. Of what year?

A. 1952, 1953, whatever year they pay.

Mr. Wilkey: We submit this custodian is not only custodian, but has occasion to refer to these very rolls to credit payments.

The Court: Yes, I will permit that testimony.

Q. I believe I asked the question of when this check for $1,347.98 from Sid and Meyer Katz came in in payment of these taxes shown on the tax receipt identified as Government's Exhibit 56-B, where would the clerk or custodian of the tax roll go to credit this check on the tax roll?

A. On page 20, roll C, line 3.

Q. It it on there?

A. No, sir.

Q. Where could it be credited?

A. It couldn't be credited.

Q. All right. Now, I show you Exhibits—first we will start—they are 51, 52, 53 and 54. We still take them in numerical order. On 51, a tax receipt to the Hagist Ranch, roll C—will you read where you should find that?

A. Roll C, page 3, on line 16.

Q. All right, sir.

Mr. Foreman: Line what, please?

A. Line 16. Yes, sir, it is here.

Q. All right. Now, that is on the proper line?

A. That is right.

Q. Will you look at the description of the property on this tax receipt, and see if that is the same?

A. State gas unit—yes, sir, it is the same.

Q. The same property. I show you Exhibit 52, also the Hagist Ranch, and ask you where that property would be found, if it is on the rolls?

A. Roll C, page 32, lines 16 and 17.

Mr. Foreman: What is that, Hagist Ranch?

A. H-a-g-i-s-t Ranch.

Q. Do you find it there or not?

A. Yes, sir, it is here.

Q. Is that the same property described on that tax receipt?

A. Yes, sir, it is the same property.

Q. All right. Thank you. I show you Exhibit 53, being another Hagist Ranch tax receipt, and ask you where you would expect to find that?

A. Roll C, page 29, line 9.

Q. Will you turn there?

A. No, sir, this is not the same.

Q. What do you find on that line and page?

A. I found Sunray Oil Company.

Q. Do you find Hagist Ranch anywhere on that page?

A. No, sir.

Q. If payment were made of that tax receipt, how would it be credited?

A. I wouldn't know that.

Q. I show you Government's Exhibit 64, being another tax receipt for the Hagist Ranch, and ask you where you would expect to find this?

A. Roll C.

Q. What year?

A. 1953. Roll C, page 29, line 16, No, sir, it is not.

Q. All right, sir. Now, that is a 1953 tax receipt on the 1953 tax roll?

A. That is right.

Q. I show you Government's Exhibit 59-B, being a tax receipt for Pitzer & Sons, and ask you where you would expect to find that?

A. Roll C, page 22.

Q. Will you turn there? That is the tax receipt for the year 1953, is it not?

A. That is right.

Q. All right.

A. It is not on page 22, line 20, roll C.

Q. Is that the citation on the tax receipt there?

A. Yes, sir.

Q. Would you look on that entire page and see if that name is anywhere on there?

A. No, sir, it is not.

Q. Pitzer & Sons is not on that entire page. Well, sir, do you know how this check of $994.40 of Pitzer & Sons could be credited to their account here?

A. No, sir.

Q. I show you Government's Exhibit 55-B, being a tax receipt for September of 1953, Gilcrease Oil Company, and ask you where you would expect to find this?

A. Roll C, page 14, line 9. No, sir, it is not there.

Q. You can't find Gilcrease Oil Company on that line? Is it on that page?

A. No, sir.

Q. All right. Thank you, Mr. Gonzales.

Mr. Gonzales, is that tax roll there arranged irregularly or alphabetically, or how? I am referring to, say, roll C.

A. Well, not necessarily. Sometimes they have roll D before roll C.

Q. I am referring to internally in roll C by the line and page number. Are the taxpayers listed—

A. Alphabetically? Yes, sir.

Q. They are listed alphabetically. All right. I show you what has been identified as Government's Exhibit 211, and ask you if you will unfasten that string there and prepare to look through there. Would you see if there is a sheet in there—first of all, are those individual inventory sheets arranged in alphabetical or irregular order?

A. Alphabetical.

Q. Will you look in that and see if you can find a sheet for Texas Consolidated Oils?

A. No, sir, it is not here.

Q. All right, sir. Would you look for Sid and Meyer Katz?

Mr. Foreman: May I ask if this has been done by the witness in some other place? Does he know? If he says he has done it elsewhere—

Mr. Wilkey: He has done it previously, but I am not sure he knows from memory what is in there or not. I prefer to have him find it in his records to be sure.

Mr. Foreman: I'm not sure he knows either for sure, Your Honor. I think it would be a much shorter way and about as accurate.

A. Here is Estella Katz, but you are asking for Sid Katz.

Q. Sid or Meyer Katz.

A. Here is Meyer Katz.

Q. Turning to the Meyer Katz list, is this item here of Meyer Katz, is that property on your tax receipt, 56-B? Is that the property listed there?

A. No, sir.

Q. Then passing by this sheet of Meyer Katz, what is the next sheet?

A. Sid and Meyer Katz.

Mr. Foreman: May we agree that Seed "S-e-e-d," and Sid are the same?

The Court: Mr. Foreman, this has happened before and I don't want you to mock the witness again. It is the third time it has happened.

Q. (By Mr. Wilkey) How many items are listed on this sheet for Sid and Meyer Katz?

A. One.

Q. How many items listed on Exhibit 56-B?

A. Seven.

Q. Is the one item which is on the Sid and Meyer Katz sheet listed here on Exhibit 56-B?

A. No, sir, it is not.

Q. Going to your records there, are there any other records of any Katz of any name, Sid, Meyer, or Estelle?

A. Estelle Katz.

Q. All right. I will ask you on Estelle Katz here or any property of Estelle Katz, if it is the same as listed on the tax receipt in the name of Sid Katz?

A. No, sir.

Q. Have we covered all of the Katz by whatever name they are in the file?

A. Yes, sir.

Q. Turn to the Hagist Ranch, if you will, in your individual sheets for 1953, and let's see what property of Hagist Ranch is listed on these sheets. Would someone be good enough to give me the Hagist Ranch?

A. Hagist Ranch.

Q. All right, sir. Can you take that Hagist Ranch sheet and I show you Exhibits 51 and 52 and see if you can compare it with either one of those?

Mr. Foreman: Do you need this (indicating), Mr. Wilkey, right now?

Mr. Wilkey: No.

A. No, sir.

Q. I will ask you to take a look at 51 here and see if the 44.773 acres, the first item, isn't the same as on the sheet you just found?

A. No, sir, it is not the same section, Section 2, Tract 1.

Q. All right, sir. Looking here at Exhibit 54, is that the same?

A. No, sir.

Q. All right, 53. Is that the same?

A. No, sir.

Q. There are some more Hagist Ranches. All right, the next sheet, Hagist Ranch, how many Hagist Ranch sheets are there?

A. Two.

Q. And how many—I will ask you here whether the tracts are the same or not in comparison with Exhibit 51, with the first part you found, or not, the acreage amounts to 44.773, 131.227, 134.773, 41.227, 155.386 and 20.614, aren't those acreage amounts identical on the tax receipt 51 and on the sheet you found in your individual inventory list here?

A. They are.

Q. You cannot say one way or the other whether those are the same tracts or not?

A. No.

Q. But the acreage is the same?

A. Yes.

Q. In reference to the next sheet on the Hagist Ranch, I will ask you to compare Exhibit 52, and ask you whether or not the acreage listed on Exhibit 52, the tax receipt, and the acreage listed on this inventory sheet you just found in your records, whether the acreage is exactly the same or different?

A. With the exception of—I don't see that 60 acres there.

Q. There is 60 acres appearing on the inventory sheet which does not appear on the tax receipt?

A. That is correct.

Q. Are the other items the same?

A. Yes.

Q. Is this correct, that in the Hagist Ranch there are two inventory sheets here in your records?

A. That is right.

Q. And in the 1953 tax rolls, you found how many of these tax receipts here on Hagist Ranch, do you recall?

A. No, sir.

Q. You don't recall. All right. Now, then, I will ask you to look up Pitzer, either Pitzer & Sons or Pitzer & West, and see if there is a sheet for them in there?

A. There is one, Pitzer & West.

Q. May I have Exhibit 59, please? Thank you.

Let's see, here on the Pitzer & West sheet, let's see whether or not the tax receipt covers the same property as the Pitzer & West sheet. How many items on the Pitzer & West sheet?

A. Two.

Q. How many items on the Pitzer & West receipt?

A. Five.

Q. Are any of these two items the same as is on the receipt here?

A. No, sir.

Q. All right. Thank you. Is there any other sheet for Pitzer & West or Pitzer & Sons?

A. No, sir, just the Pitzer & West.

Q. Now, I will ask you to look for Gilcrease Oil. See if you can find an individual inventory sheet for Gilcrease Oil as a taxpayer?

A. No, sir.

Q. You could not?

A. No, sir.

Q. All right, sir. You may put those back together, if you will, sir.

I show you what has been identified as Government's Exhibit 210, and ask you what this is?

A. Those are the property owners or rendered property.

Q. And is the unrendered also there attached on a separate list?

A. Yes, sir.

Q. Is this true or not, is this or is it not—for what year is that list you have there?

A. 1952.

Q. Is that 1952 in alphabetical order?

A. Yes, sir, as far as I can say, it is.

Q. Is that alphabetical list of property owners—we will put it this way. For those property owners there listed, were they—were there rendition sheets, individual sheets like you have examined for the year 1953?

Mr. Foreman: I would like for the witness to say what they are, if he knows, Your Honor.

The Court: The suggestion is a proper one.

Q. (By Mr. Wilkey) I will put it this way: If you made up an alphabetical list of these sheets you have just gone through there, would you have a list of property owners comparable to the list of 1952 which you hold in your hand there?

A. Yes.

Mr. Foreman: I object to that as calling for a conclusion.

The Court: Object sustained.

Q. All right. I believe I have asked you this before, but just to be sure, do you have an alphabetical list for 1953 furnished you by Thomas Y. Pickett comparable to the list of 1952 you have in your hand?

Mr. Foreman: Your Honor, nothing is comparable. The North Pole is comparable to the equator, therefore it is a conclusion of the witness, the word comparable. That is the word to which we are aiming our objection.

The Court: Objection sustained.

Q. Did you have an alphabetical list of owners of 1953?

A. I do not.

Q. Referring to your alphabetical list of owners for 1952, will you look on there and see if Gilcrease Oil is listed in either the rendered or unrendered section?

A. Yes, it is on the rendered.

Q. All right. Now, then, see about Hagist Ranch. Is that on there?

Mr. Foreman: If it please the Court, as to what is on a copy of Thomas Y. Pickett's report is immaterial. The question could only be material if it were on the tax roll of the Benavides Independent School District. There isn't any showing that this is kept by him or used for any purpose at all other than some service performed or purported to be performed by some individual, Thomas Y. Pickett, I think of Fort Worth, but the tax roll is the only thing that could be material to any search here. These men are not chargeable with the errors of omission, if any, of some stenographer in the office of some private agency up in some other Texas city, who is not here to testify and subject to cross examination.

Mr. Wilkey: Your Honor, subsequent testimony not from this witness, because he was not in the office in 1952 or 1953, will establish the relation between the material furnished by Thomas Y. Pickett and the preparation of the 1952 tax rolls.

Mr. Foreman: I suggest he establish by that person whatever he proposes to establish, rather than from somebody who doesn't know.

The Court: On the present state of the record, the objection is good and I will sustain it, and court will recess for 20 minutes.

(Short recess.)

The Court: Be seated, please.

Q. (By Mr. Wilkey) Mr. Gonzales, in the fall of 1951, aside from being tax assessor and collector of the Benavides

Independent School District, did you hold any other position?

A. I acted as secretary.

Q. All right. Now, for identification I am going to show you certain other documents here. I will ask you if you know what this is?

A. This is the unrendered oil for 1953.

Q. From your records there of the School District office?

A. Yes, sir.

Q. And I show you an—

(Document tendered to the Clerk and marked Government's Exhibit 212.)

—ask you what that is?

A. This is roll D of the rendition for 1952.

Q. And what part of the alphabet does that cover?

A. It covers M to Z.

Q. I show you this volume here, and ask you what that covers?

A. A to K.

Q. A to K?

A. Roll D, 1952.

Q. Both of those are roll D of 1952. We ask that that be marked with the next number.

(Documents tendered to the Clerk and marked Government's Exhibits 213 and 214.)

Mr. Wilkey: We are not offering those in evidence, but being part of the records for the years 1952 and 1953, we are asking they be marked for identification.

Mr. Foreman: I understand one is A through K and the other M through Z. Is that what the record shows?

Q. (By Mr. Wilkey) Would you take a look, Mr. Gonzales?

A. Yes, A to K and L to Z, it looks like to me. To Z.

Q. For the record, you are referring to Exhibits 213 and 214?

A. Yes.

Mr. Wilkey: No further questions.

6-1275 CROSS EXAMINATION

Q. (By Mr. Foreman) Mr. Gonzales, how many times and places have you testified in these various Duval County cases since you commenced being secretary in June of 1955?

A. One time at Fort Stockton and one time here.

Q. Did you ever go to Tyler?

A. Yes, sir, but I didn't testify.

Q. That is right. Somebody got sick and you went home?

A. My little girl.

Q. Did you testify at—

A. New Braunfels too. That is true.

Q. You didn't testify at Abilene?

A. No, sir.

Q. Mr. Gonzales, did you ever produce these original records that the Clerk has just placed on the table, identi-

fied but not introduced, as records of the Benavides Independent School District, alphabetical lists of individual rendered rolls of each person?

A. They were not subpoenaed.

Q. Didn't you bring about a couple of carloads to Tyler?

A. Yes, sir, but they were never introduced.

Q. As a matter of fact, there was a whole storeroom full of it, wasn't there, packed to the ceiling and all to the walls?

A. That is right.

Q. And when did you first show these voluminous records identified as A through K and L through M, and a complete list not only of the alphabetical taxpayers as individuals, but as separate sheets showing the amount of each individual taxpayers property in the Benavides Independent School District? When did you first show them to any of the representatives of the prosecution?

A. This is the first time that I have brought this identified as 213 and 214.

Q. You misunderstood my question. It had nothing to do with bringing them here, but showing them presumably at the offices of the Benavides Independent School District?

A. They have never—I don't know that they have ever seen them before.

Q. You mean—

A. At the office.

Q. You didn't show them to Mr. Main?

A. No, sir.

Q. You didn't show them to Mr. Bottler or Mr. Wilkey or Mr. Freeman or any of the other investigators?

A. No, sir.

Q. Well, how did you happen to bring them this time?

A. They were subpoenaed, and I found them in an old safe in the district office. There were a lot of old records there, and I found these.

Q. When did you first find them?

A. Oh, about a month ago.

Q. Now, with reference to this diagram behind us, show the jury approximately where you discovered these records which are here now for the first time? To help you get oriented, this is the front reception room, counter, taxation department of the school District. I think your old safe may have been in 4.

A. I think that is where it is, 4. The old safe was in there.

Q. Here is a pointer (counsel tendering a pointer to the witness).

A. That safe is here. It shows "safe." This is not the vault. This is an old safe and we have a vault about the size of a room.

Q. Is that it over at the end, is that it?

A. This is the vault.

Q. Room 3, it says "School District records."

A. And the old safe is over here in Room 4.

Q. But of the records you did bring up there that were there when you took over, they filled a hotel room in Tyler?

A. That is right. They were not used.

Q. And all you have undertaken to bring here—or do you have a hotel room of paraphanalia here too?

A. No, that is all I have, the boxes here, the taxpayers.

Q. And this constitutes a pasteboard box about two feet by fifteen inches by about twelve inches high, and two boxes about that size?

A. Yes, the same size.

Q. Then you are still discovering after two years on duty records there that you didn't know were there, aren't you?

A. That is right.

Q. Will you tell this jury whether or not included anywhere in this more recent excavation or discovery you have run across minute books for the Benavides Independent School District for a period of time ranging from 1946 to October 3, 1953?

A. Well, we found some old record minute books that was during Mr. Vaello's acting as tax assessor and collector. They run back, I would say, 15 or 20 years ago.

Q. Well, you I believe had from 1938 down to sometime in the early '40's at Tyler. Is this something now you have recently found?

A. No, that was the one we took to Tyler.

Q. Describe to the jury what those books looked like that you had, the minute books? Do you have them here now?

A. No, sir.

Q. Do you know where they are?

A. They are in some court, either in Tyler or Fort Stockton or New Braunfels. I don't know where they are.

Q. Describe to the jury what the minute books of the Benavides Independent School District looked like. First, what color were they?

A. They were bound in big red covers, and I think those pages were not typewritten. They were written in longhand, some of them, and some of them were typewritten, and I don't know just exactly how many pages were in each book, but I would say maybe fifty pages in each.

Q. About how thick were the books?

A. They were about that thick (indicating), about two inches maybe.

Q. Then the books were about two inches thick, and how wide were they?

A. They were about fourteen inches long and about six or eight inches wide.

Q. And the back, were they expandable or movable, or permanent volumes?

A. No, they were expandable.

Q. Then, do you recall how many volumes there were, Mr. Gonzales?

A. We found two.

Q. And was one red and one black, or both red, or do you recall?

A. Seems to me like they were both red. I don't recall exactly.

Q. Do you recall down to what year they came?

A. No, sir, I don't. I don't recall to what year they came.

Q. You don't know whether they came down into the '50's or not?

A. No, sir, I don't.

Q. Let me have that—I think it is Government's Exhibit 27. I am not offering it, but just to ask a question. Have you got Government's Exhibit 27?

Mr. Wilkey: It hasn't been offered yet.

Mr. Foreman: I don't want to offer it either, but just for examination.

(Government's Exhibit 27 tendered to counsel.)

Both books look anything like this?

A. The pages did.

Q. The pages were approximately the same size?

A. Yes.

Q. Was the binding anything like that?

A. There was a binding on them.

Q. There was a binding, as you have described?

A. Yes.

Q. Was that old safe full of stuff?

A. Yes, sir.

Q. Where is the rest of it?

A. In the safe?

Q. You didn't inventory what was in it?

A. No.

Q. Was some of it wrapped up in bundles?

A. Yes.

Q. It is still just as it was?

A. That is right.

Q. How did you happen to bring this stuff? Were they mentioned as a part—

A. Yes.

Q. 109-A through F or G. Do you know Mrs. Conrad Carrillo, Conrado Carrillo?

A. Yes.

Q. Is she a substitute teacher in the schools?

A. Not at the present time.

Q. Are you sure she is not at this moment, or wasn't last week, a teacher substituting for Mrs. Floyd Ray?

A. No, sir, I don't think. She has been here too. Mrs. Conrad Carrillo—unless you are referring to somebody else.

Q. I think Mr. Chapa's daughter is substituting for Mrs. Ray. Isn't that correct?

Mr. Foreman: You are right, Your Honor. That is Mrs. Conrado Carrillo. What is her first name?

A. Celia?

Q. Mrs. Celia Carrillo.

A. When she was not married she was Celia Carrillo, and she married a boy by the name of Rodelio Ramirez, but later I understand he is not a Ramirez—

Q. He has taken some other name?

A. Well, not that, but he came to Benavides with his uncle, and he took his uncle's name or—he has the name, Guajardo name.

Q. Is there anything unusual in the Spanish custom for a man to be known for a certain period by one name and then use that name for an initial and go on with a new name?

A. No.

Q. That middle initial means very little according to whenever he started using some other name?

A. Yes, that is right.

Q. That is done by honest, legitimate, responsible people, isn't it?

A. Oh, yes.

Q. You do know a Mrs. Conrado Carrillo who teaches in the schools there, do you not, sir?

A. Not Mrs. Conrado.

Q. You know a Conrado Carrillo?

A. Yes.

Q. Who is Reynaldo Chapa?

A. Reynaldo Chapa is, at the present time, the foreman of the janitors.

Q. The head janitor?

A. Yes.

Q. And in December 1953, do you know what his salary was, according to your records?

A. About $100.

Q. And you figures there would not be anything unusual about him receiving a hundred dollar check, or even being paid a few days before Christmas, inasmuch as the holiday period was on, and then there is R. Chapa. Is there another Reynaldo Chapa who is a carpenter, or do you know?

A. No, I don't know any other Reynaldo Chapa.

Q. Do you know there isn't one?

A. I wouldn't swear to that, but I don't know any other.

Q. Here is 109-D payable to Hilda C. Gonzales. Who is she?

A. She is one of my clerks.

Q. Is that C for Chapa?

A. Yes.

Q. Do you know how long she has been employed there?

A. Longer than that 1953.

Q. What was her salary, if you know, according to your records in 1953?

A. $125.

Q. Then there would have been nothing wrong with that check, as far as you can tell, is there?

A. No, sir.

Q. It appears to have been cashed at the Cash Store.

Mr. Wilkey: Which one are you referring to, 109-D? There is no contention by the Government that is not a valid check.

Q. (By Mr. Foreman) Who is D. C. Chapa?

A. As far as I know, that is Mr. Chapa over there, D. C.

Q. What is your salary?

A. $500 a month.

Q. And his was $300, wasn't it?

A. Yes.

Q. And he was employed, as far as you know, in December of 1953?

A. Yes.

Q. Who is A. L. Valerio?

A. Well, I don't know the gentleman. I have heard and I think he was employed by the Benavides Independent School District.

Q. In what capacity?

A. I think he was there at Benavides as a janitor for some six or eight months, just very recently. I don't know him.

Q. Who is Mr. W. E. Ponder?

A. He is the auditor for the Benavides Independent School District.

Q. With Ponder & Slavick?

A. Yes, sir.

Q. In Corpus Christi?

A. Yes.

Q. They audit other school districts and other public as well as private industries, and businesses in southwest Texas?

A. Yes, I understand they do.

Q. How often does he come in the offices of the Benavides Independent School District?

A. I would say he comes in—

Mr. Wilkey: Can we fix the time as to when this inquiry is addressed?

Mr. Foreman: Right now. Starting with your office.

A. The time that he comes in?

Q. Yes, sir. How often does he come?

A. Well, he was there last Christmas, if I remember right.

Q. Is he there once a week, once a month, or once a day?

A. He wouldn't be there in about three months, then when we have a lot of work, and by the time he audits the books, they come in and stay a week and sometimes two weeks.

Q. They bring a crew with them?

A. At times.

Q. And has that been going on ever since you went to work there in January of 1955?

A. That is right.

Q. And do you know whether he started with the 1953 books?

A. 1953? I don't know. I think they came in 1954.

Q. Did you ever show these stacks that are here laying on this counter, the complete list of the individual landowners showing all of their property and an alphabetical list of all taxpayers, to Mr. Ponder?

A. No, sir.

Q. As far as you know, Mr. Ponder has never seen those?

A. No, sir.

Q. Has he ever asked to have them?

A. No, sir, not for those records.

Q. But they do show a complete list of whatever they purport to show as far as you know for 1952 and 1953?

A. That is right.

Q. And you say of these various people that Mr. Wilkey asked you about, the only ones whose property you found at the place in the books where they were supposed to be was the Hagist Ranch properties?

A. Yes, sir.

Q. Now, Mr. Gonzales, who, even now, types the original of that Government's Exhibit 34, purporting to be a copy or is a copy, a photostat copy? What type help? Where do you get the girls or men, either, who do that typing? Aren't they just high school students?

A. Well, yes, I would say they are high school graduates.

Q. Are they graduates, or people who are studying typing as undergraduates at the high school?

A. Well, the ones we have at the present time are all graduates.

Q. Do you know whether or not back in 1949 through 1953, the people who typed up these rolls were ninth and tenth and eighth grade students studying typing in the business training course of the school?

A. I don't know.

Q. Is it not so, Mr. Gonzales, that the tax statement receipt, of which these are copies, are all typed at the same time or immediately after, or even while the roll is being typed and—

Mr. Wilkey: We ask in what year he is referring to?

Q. As of now. What do you know about it, sir?

A. Yes, sir, that is correct. They are typed.

Q. Now, do you—

Mr. Wilkey: What was that answer, please?

A. Yes, they are typed about the same time as they are typed into the tax roll.

Q. Explain to the jury, or see if I correctly state the practice: Isn't it true that those come in bunches of about five or six, meaning a white one, a blue one, a yellow one, an orange one, and a green one, each of which has a different significance or has a different purpose, and used at different places?

A. Yes, sir, that is right. We have four copies.

Q. Well, now, are those copies white, blue, yellow and orange or pink?

A. Well, it is pink.

Q. Is there no yellow or no orange?

A. No orange.

Q. White, blue, yellow and pink, and which is the statement sent out originally to tell the taxpayer how much he owes?

A. Well, there is a white one too. Then when we get the payment, we send out the tax receipt.

Q. I am going to take each of these successive steps, but is that white one you send out the original of the typed quadruplicate?

A. Yes.

Q. It is the top one?

A. Yes.

Q. But when that is sent out, it is merely a dun, a bill, a statement for taxes, and when he remits, do they send back that statement?

A. As a rule, they do. Most of them do.

Q. And when he does send it back, you send him another white one?

A. The tax receipt.

Q. Is that No. 2 on the list, or is it the bottom of the list?

A. No, it is the second one.

Q. And what is done with the pink and blue one?

A. We hold the next one, which is No. 3, and if the taxes are not paid in time, that is the delinquent notice.

Q. The pink or the blue one?

A. That is the blue one.

Q. And the pink one is your permanent record?

A. That is right.

Q. Then, isn't it true that all of the information that appears there on Hagist Ranch, or that appears on one of these tax statements made out in quadruplicate, is put on there at the time and before the first sheet is mailed out?

A. That is right.

Q. Then it is not filled out, the tax receipt is not filled out, after the check comes in to pay the taxes, but you merely extract another sheet and mail it?

A. Merely correct the total amount of taxes, show the discount, and the net amount paid, and then it is signed.

Q. Now, Mr. Gonzales, I not that some of these are long, meaning legal size, some are exceedingly short, yet they all have at the top "Roll," "Page," "Line," "Benavides, Texas, blank, 19-something." What is the significance, if any, between the short statements here to the Hagist Ranch and the long statements to the Hagist Ranch?

A. I don't know if there is any significance. I presume when they started out on this, it is the mere fact that oil companies have a lot of property to show, and they had begun on the long form.

Q. Then, having used up two of those short ones, they then go over to the long one, whereas one long one could have just as well had all of the property on it, is that right, sir?

A. Yes.

Q. Now, I believe you had said a while ago that there is one 60-acre item left off of the Hagist Ranch?

A. Yes.

Q. Can you tell, from examining that, whether or not that was simply an oversight on the part of the stenographer copying it, going an extra line, or whether or not there was something from the records they had left out, or why that particular 60 acres wasn't mentioned?

Mr. Wilkey: I object. That calls for a conclusion without the power of the witness.

The Court: I will allow the question. Counsel is allowed to ask leading questions, and if he is asking if he knows this or that, I will allow it.

Q. Or can tell from your records, was a part of my question.

A. It could be a typographical error. It could be that happens quite often, and every so often an oil company record, we correct the description of their property which is wrong, either left out or too much on it.

Q. As a matter of fact, the town of Benavides does not afford many of what you would call first-rate, high-grade typists, does it?

A. No, sir. Salaries are very small.

Q. Sir?

A. Salaries are very small. You can't afford to.

Q. As a result, you have to use such office help as you can?

A. That is right.

Q. And just as typographical errors frequently are called to your attention on the tax statements, rendered, you likewise find them from time to time on the tax rolls, don't you, Mr. Gonzales?

A. That is right.

Q. Have you looked anywhere in those rolls, or in that safe or anywhere else down there in your vault, other than at the page and line suggested at the top of that typed list, to ascertain whether or not any given taxes were shown elsewhere than they were supposed to be shown?

A. No, sir.

Q. Then all you are undertaking to testify to this jury is that at whatever place some of these places he asked you —they do not appear at that particular page and line?

A. That is true.

Q. You, of course, are not certifying to the infallibility or accuracy of the typists in 1952 and 1953?

A. That is right.

Q. Or even do you now in 1955?

A. That is true, too.

Q. There is something I took down here I would like to clear up merely because of my lack of comprehension. I copied here, "We destroyed letters of transmittal accompanying checks." Was that correctly taken down?

A. That is correct, yes, sir. Quite often we get a letter with the check saying "Herewith please find check so-and-so number so-and-so," and we destroy the letter.

Q. Immediately?

A. Immediately, yes, sir. Throw it away.

Q. In other words, you do not keep a file, a dossier, or a folder for each of those individuals shown by those voluminous stacks so as to file other correspondence with them, and check back at some later—

A. No, sir.

Q. And did you—the only copy of whatever you may have sent them is represented by whatever this high school girl typed on the original receipt or, rather, statement you sent them, is that not true?

A. That is true.

Q. Now, this Thomas Y. Pickett that you mentioned a while ago is a company or individual with headquarters where, if you know?

A. In Dallas, and they have a branch office in Corpus Christi.

Q. And do you draw any pay from Thomas Y. Pickett for doing for them what you pay them to do?

A. We pay them. The School District pays them.

Q. And you only work for the School District. You don't take money from both ways, from Pickett and the School District, do you?

A. No, sir.

Q. Where is that list of taxpayers? Is it over here (indicating)? Now, this is for what year?

A. 1952.

Q. Do you know who typed that up?

A. No, sir, I don't.

Q. You don't know whether or not one Diego Heras did it or not?

A. No, sir.

Q. And whether he worked for the School District and Thomas Y. Pickett?

A. No, I don't.

Q. You don't know—this is only for the year 1952?

A. That is right.

Q. As to the year 1953, you do not have one of those?

A. I could not find it.

Q. Whether or not it is in one of those bundles in the safe, you couldn't say?

A. No, sir.

Q. As a matter of fact, you don't know whether those

bundles in that safe are checks, vouchers, or what are in those voluminous bundles in that safe?

A. No.

Q. How big is that safe?

A. Well, sir, it is about eight feet high and about three and a half feet deep and about four and a half feet wide.

Q. Big enough for a smokehouse, isn't it?

A. Yes, sir.

Q. Where is V. L. Sewell now?

A. He is at Benavides.

Q. What does he do now?

A. He is principal of the high school.

Q. And where is Samuel Garcia?

A. He is teaching at Benavides too. He is one of the teachers.

Q. Sewell was the tax collector and then Samuel Garcia.

A. Yes.

Mr. Foreman: That is all. No other questions.

6-1297 REDIRECT EXAMINATION

Q. (By Mr. Wilkey) Mr. Gonzales, from what source or list is the information secured for the typing of those tax statements?

A. From the tax rolls.

Q. From the tax rolls. From what source is this notation in the upper lefthand corner of all these, roll, page and line, determined?

A. From the tax rolls.

Q. Am I right or wrong as to whether the listing in

ordinary practice must be on the tax rolls before this tax receipt can be prepared?

A. It should, correct.

Q. All right. In your practice preparing these tax receipts to send out, do you give the tax roll to one person or more than one person to type up?

A. More than one person.

Q. And how do you break it down?

A. We take Roll B for one, Roll D for another, and Roll C for another.

Q. Could the sending out of one of those tax receipts to a taxpayer whose name is not even on the tax rolls be a typographical error—

Mr. Foreman: Just a minute. I object to that. He is calling for a conclusion.

The Court: Objection sustained.

Q. (By Mr. Wilkey) In the practice you follow when you give the persons who prepare those tax receipts the information, do you give them any information about the name and address and property other than what is on the tax rolls there to copy from?

A. No, sir.

Q. Is that all they have before them when the make up those tax receipts?

A. Yes, sir, the tax rolls.

Q. Are those tax rolls in alphabetical order?

A. Yes, sir.

Q. All right. In your practice, do you send out tax receipts or tax statements to persons whose names are not even on the tax rolls?

A. No, sir.

Q. Have any of your high school girls ever sent out tax statements to people not even on the tax rolls?

Mr. Foreman: I object to that. It is calling for hearsay.

Mr. Wilkey: It is asking for an act to his knowledge.

The Court: He may answer the question within his knowledge, if he knows such has been done.

Mr. Wilkey: Will you repeat the question?

Mr. Foreman: We would like to have it read back.

The Official Reporter (Reading): "Have any of your high school girls ever sent out tax statements to people not even on the tax roll?"

Q. To your knowledge.

A. Not to my knowledge.

Q. Before coming up here to testify today, did I ask you to make a search of all your records there for an alphabetical list of owners of 1952 and 1953?

Mr. Foreman: We object to any conversation out of the presence and hearing of any of these defendants, between the District Attorney and—

The Court: Sustained. You may ask him if he made such a list, but why he made it is not material.

Q. (By Mr. Wilkey) Have you made a search for an alphabetical list of taxpayers for the years 1953?

A. I have.

Q. Did you find it, sir?

A. No, sir. I found the 1952.

Q. You found the 1952, Government's Exhibit 210?

A. Yes, sir.

Q. Not the '53?

A. Not the '53.

Q. Have you made a search for all of the inventory individual lists?

A. Renditions?

Q. For 1952 and 1953?

A. Yes, sir.

Q. Are there any besides those you have brought here?

A. This is what I found, yes.

Q. All right, sir. Have you made a search for the ownership lists for 1952 and 1953?

A. I did. I found the 1952 only. That is 1952.

Q. Are those what you found?

A. That is what I found.

Q. Did you find 1953?

Mr. Foreman: That is at least the ninth time that question has been asked, when he first had him and three times when he had him back.

Mr. Wilkey: He went into the matter of records on cross. I think I have a right to go back into it for clarity.

The Court: Very well, sir. You may continue.

Q. Have you searched your records for canceled checks and bank statements for the years 1949—

A. Yes, sir.

Mr. Foreman: As to what he was searching for, I object. As to how thorough his search was I have no objection, and what he found and produced I have none, but he has already stated he had this voluminous safe full of things that he doesn't know what it is for. To say he

searched, and didn't search carefully enough, suggests he made a careful search, and it is leading and misleading.

The Court: I will sustain the part of the objection that it is immaterial as to what he may have been searching for. He may testify what he has found among the official records.

Q. (By Mr. Wilkey) Where have you looked in making a search for records you brought here today?

A. In the vault and in the safe, but there is so much records there it probably would take a year to go through all of them. There is a lot of old records there.

Q. Did you find any checks for the years 1949, 1950, 1951 and 1952?

A. No, sir.

Q. Did you find any for 1953 except the ones you brought?

A. Just the ones I brought.

Q. Do you have checks for the year 1954?

A. Yes, sir.

Q. Did you bring those?

A. Yes.

Q. Did you find any minutes covering the years 1949 and '50, '51 or '52 or '53?

A. No, sir.

Q. Did you find any tax rolls covering the years 1952 and 1953 other than those two which are in evidence here?

A. No, sir.

Q. Is there more than one or one book of tax rolls for a certain year?

A. Just one for each year.

Q. All right, sir. Are you willing to bring whatever

other records remain in the School District office there which may be relevant to this case at the request of either the defense or the prosecution, if we specify the records?

Mr. Foreman: We object to that as calling for a conclusion of the witness as to what is relevant.

The Court: I think the willingness or unwillingness of the witness is immaterial to this case.

Mr. Foreman: And—may we approach the Bench with the stenographer?

(The following proceedings were held at the Bench out of the presence and hearing of the jury.)

Mr. Foreman: Comes the defendants and each of them at this point, and after Mr. Wilkey has just made the suggestion in the presence and hearing of the jury that the defendants produce evidence, and respectfully move for a mistrial, for the reason that there is no burden placed in law on the defendants to produce any evidence, and the remarks and invitation and comment of the prosecuting attorney in the presence of the jury is a comment upon our failure to produce evidence and in effect a dare to produce evidence or an effort to shift the burden of proof, and the damage deemed by the defendants of such great harm as to seriously affect their rights in the eyes of the jury, and as to be incapable of being cured by instruction of the Court not to consider the dare, invitation, suggestion or inference, or suggestion that the burden is on the defendant to produce evidence, or the invitation to the defendants to produce evidence.

The Court: I want to go back and consider the question. Will you go back there and read me the question?

The Official Reporter (Reading): "All right, sir. Are you willing to bring whatever other records remain in the School District office there which may be relevant to this case at the request of either the defense or the prosecution, if we specify the records?"

The Court: I will take the motion under advisement. I suggest we at this time proceed with the case.

Mr. Foreman: Yes, Your Honor.

(The following proceedings were held in the presence and hearing of the jury.)

Q. (By Mr. Wilkey) Do you know the name of Hilda Chapa Gonzales' father?

A. Yes.

Q. What is that?

A. Reynaldo Chapa.

Q. With reference to Mr. Foreman's question in regard to Celia Carrillo, whom I believe you said married someone called something, Ramirez?

A. Ramirez, yes.

Q. You testified he was known as Ramirez and another name?

A. Guajardo.

Q. Have you ever heard him called by his wife's name Carrillo?

A. No, I don't think so. After she married, I think she was Mrs. Ramirez.

Q. Mrs. Ramirez or Mrs. Guajardo?

A. Yes.

Mr. Wilkey: No further questions, Your Honor.

6-1305 RECROSS EXAMINATION

Q. (By Mr. Foreman) As I understand your testimony, Mr. Gonzales, it would take probably a year to go through and sort out, arrange, and re-file the conglomerated mass of records that were turned over to you, and which now repose in the offices of the Benavides Independent School District before you could in fairness to you testify as to whether or not there were there minutes, checks for any given year or month, or the tax rolls, is that not true?

A. That is about right, yes, sir. It will take a long time to get rearranged all those records.

Q. Then you are not saying there are not checks there for every year from 1930 down through 1954, are you?

A. That is right. I am not saying that.

Q. You are not saying that there are not bound volumes of accurate minutes for every year from 1933 on up?

A. I am not saying that.

Q. And you are not saying there are not supplementary tax rolls for the years through 1954, are you?

A. That is right.

Mr. Foreman. That is all.

Mr. Wilkey: No further questions, your Honor.

6-1306 JOSE LOPEZ,

a witness called in behalf of the Government herein, having been first duly sworn on oath, testified as follows, to-wit:

6-1306 DIRECT EXAMINATION

Q. (By Mr. Wilkey) Will you state your full name, sir?

A. Jose C. Lopez, sir.

Q. Where do you live, Mr. Lopez?

A. San Diego, Texas.

Q. Where are you employed?

A. The First State Bank of San Diego.

Q. How long have you been employed at the First State Bank of San Diego?

A. Since it was organized in August of 1954.

Q. Before August of 1954, where were you employed?

A. The San Diego State Bank.

Q. What is the relation of the First State Bank of San Diego to the San Diego State Bank?

A. The First State Bank succeeded the San Diego State Bank, sir.

Q. What years did you work in the San Diego State Bank?

A. Well, I started in 1954, and I worked there until September of 1942, and I was out about two years.

Q. I believe you stated you started in 1954 and worked until 1942?

A. I started in 1924, pardon me, and I was drafted in 1942.

Q. After the war, did you work for the San Diego State Bank again?

A. Yes, sir.

Q. And were you employed in the years 1949 through the middle part of the year 1954?

A. Yes, sir.

Q. What is your present capacity for the First State Bank?

A. Cashier.

Q. What was your capacity at San Diego for the years 1949 through 1954?

A. Teller.

Q. What were your duties as teller?

A. Both as paying teller and receiving teller.

Mr. Wilkey: May I have one moment, Your Honor? I want to get some documents here.

(Short interval)

I will show you what has been identified as Government's Exhibits 78 and 79, and ask you what those sheets are?

A. Those are liability sheets, sir.

Q. Of whom?

A. Of Mr. D. C. Chapa, Box No. 44, Benavides, Texas.

Q. All right, sir. Are you familiar with these two sheets, the liability sheets of Mr. Chapa?

Mr. Foreman: May it please the Court, we move that this evidence be limited to D. C. Chapa, and on behalf of all the other defendants we object and except to it being received as to them as to any count.

The Court: What says the Government?

Mr. Wilkey: Your Honor, this is admissible as part of the general scheme to defraud in regard to the certain specific allegations in the indictment, and as part of the scheme on the first 19 counts and also on the 20th count, the conspiracy count, as to the design, plan and operation of the scheme during the years—this will be particularly during the year 1953 here.

Mr. Foreman: Is the exhibit in the stenographer's record so as to establish it as the individual private ledger sheet of D. C. Chapa of the San Diego State Bank?

Mr. Wilkey: Yes, it is, and it is so stated in the record.

The Court: Is it identified by number?

Mr. Wilkey: Yes, Your Honor, 78 and 79.

The Court: Objection overruled.

Q. (By Mr. Wilkey) Did you, from time to time, make any entries on these sheets, Mr. Lopez?

A. Yes, sir.

Q. In the performance of your duties there in the San Diego Bank?

A. Yes, sir.

Q. Are they part of the records of the bank?

A. Yes, sir.

Q. I will ask you to turn to the date of October 5, 1953, on that liability sheet, and ask you if Mr. Chapa—if the amount which Mr. Chapa owed the San Diego Bank increased or decreased on that day, October 5, 1953?

A. It decreased.

Q. By about how much?

A. 4,600-and-some-odd dollars.

Q. A 4,600-and-some-odd dollar decrease?

A. Yes.

Q. Turning your attention, for the moment, to four checks here, I want to show you first Government's Exhibit 47, and ask you if you can tell whether or not that check went through your bank?

A. Yes, it did.

Q. On what day?

A. October 5, 1953.

Q. All right, sir. I show you Government's Exhibit—

Mr. Foreman: Your Honor, those exhibits are already in evidence. He has repassed them to the jury. I would like to see them as he questions. The jury has seen all of these. There is no need to pass them back as part of the argument. They have been passed to the jury at least two times.

Mr. Wilkey: On that score, I would say that counsel has seen these before, and I pass them to the jury in regard—

The Court: He may see them again.

Mr. Wilkey: Certainly, and I pass them to the jury in regard to the testmony of this witness.

The Court: That will be permitted.

Q. (By Mr. Wilkey) Now, then, I show you what has been identified as Government's Exhibit 50, and ask you if this check of the Hagist Ranch went through your bank?

A. Yes, sir, it did.

Q. On what day?

A. October 5, 1953.

Q. All right. I show you what has been identified as Government's Exhibit 56-A, a check of Sid and Meyer Katz—

Mr. Foreman: Give me the Hagist Ranch number, please sir?

Mr. Wilkey: 50.

—and ask you if Government's Exhibit 56-A of Sid and Meyer Katz, that check, went through your bank?

A. 56-A. Yes, sir, it did, sir.

Q. On what day?

A. October 5, 1953.

Q. All right, sir. I show you Exhibit 59-A, being a check of Pfizer & Sons, and ask you if that check went through your bank?

A. Yes, it did.

Q. On what day?

A. October 5, 1953.

Q. All right, sir. I will ask you to look at the liability ledger sheet of D. C. Chapa again and refer to the date of October 14, 1953.

A. Yes, sir.

Q. I will ask you if the amount Mr. Chapa owed the San Diego bank increased or decreased on that day?

A. It decreased that day.

Q. By about how much did it decrease?

A. Not quite 3000, about 2900. 3000—2000 even.

Q. 2000?

A. Pardon me, lady. I got on the wrong line. That is 2980 dollars.

Q. A $2980 decrease?

A. Yes.

Q. All right, sir. Now, I will show you Government's Exhibit 44, being a check of J. E. Beall, and ask you if this check went through your bank?

A. Yes, it did.

Q. On what day?

A. October 14, 1953.

Q. All right, sir. I will show you a check identified as Government's Exhibit 55-A of the Gilcrease Oil Company, and ask you if that check went through your bank?

A. Yes, sir, it did, sir.

Q. On what day?

A. October 14, 1953.

Q. I show you a check identified as Government's Exhibit 58-A of the Gasoline Production Corporation, and ask you if that went through your bank?

A. Yes, sir, it did.

Q. And on what day?

A. October 14, 1953.

Q. I show you a check identified as Government's Exhibit 60-A of J. T. Dinn, and ask you if that check went through your bank?

A. Yes, sir, it did.

Q. And on what date?

A. October 14, 1953.

Q. All right, sir.

Mr. Wilkey: Your Honor, we offer in evidence—they have been offered, 78 and 79 and received.

The Court: They have been admitted.

Q. (By Mr. Wilkey) I show you what has been identified as Government's Exhibit 74, and ask you what that is?

A. That is a general—not general-ledger account of the Benavides Independent School District, tax collector accounts, petty cash account rather, by D. C. Chapa.

Q. When was that account opened?

A. Started December 13, 1951.

Q. And when was it closed?

A. It was closed on August 7, 1953.

Q. August 7, 1953. All right, sir. During the period of 1951 to 1953, was there any other account besides this of the Benavides Independent School District in the San Diego State Bank?

A. No, sir.

Q. Is that the only account?

A. Yes, sir.

Q. I show you what has been identified as Government's Exhibit 75-A through 75-M and ask you what those are?

A. Those are the original deposit tickets to the account of tax collector's account, Benavides Independent School District by D. C. Chapa, tax collector, Box 44, Benavides, Texas.

Q. All right, sir. Where did you obtain those deposit slips?

A. From our records, bank records, sir.

Q. How did you know where to go look for those particular deposit slips?

A. Well, we found the ledger sheet and we look at the dates, and we go to our deposit records and I get them from there.

Q. All right, sir. Are there any deposits shown on the ledger sheet here for which you do not have deposit slips?

A. They are all here, sir.

Q. Check me if I am incorrect. As I understand it, these deposit slips represent all the deposits shown on the ledger sheet?

A. They do, sir.

Q. Are these records of the San Diego State Bank?

A. Yes, sir.

Q. Kept in the regular course of business?

A. Yes, sir.

Q. Were they currently and correctly kept?

A. Yes, sir. We still keep them.

Mr. Wilkey: Your Honor, we offer in evidence Government's Exhibits 74 and 75-A through M.

Mr. Foreman: Again, Your Honor, we say that, and move that, these be limited to D. C. Chapa, and also on behalf of the other defendants, to their being received as to them individually on any counts, and ask that the Government specify and stipulate as to what counts it claims to offer these exhibits, or the applicability and for what purpose they are offered.

The Court: Is it to the general scheme?

Mr. Wilkey: Yes, Your Honor.

The Court: They are admitted as to all defendants and as to all counts.

Q. (By Mr. Wilkey) I will ask you to identify Government's Exhibit 76—I will ask you if you have seen 76-A through 76-R before?

A. Yes, sir, I have.

Q. What is that?

A. This is the account of D. C. Chapa, Box 852, Benavides, Texas, with the San Diego State Bank.

Q. All right, sir.

Mr. Foreman: I missed that. Account of what?

A. Pardon me. I left out the personal account, I should have said. The personal account of D. C. Chapa, Box 852, Benavides, Texas. This is a record, rather, of the personal account of D. C. Chapa, Box 852, Benavides, Texas, with the San Diego State Bank.

Q. What period of time do these ledger sheets, Exhibits 76-A, et cetera, cover?

A. It starts with the balance brought forward as of December 20, 1951. It shows—

Q. Where does it end?

A. You do not want me to count the sheets?

Q. Count the sheets, if you wish.

A. It ends—

Q. Check and be sure that the sheets are in order.

A. All right, sir.

(Short interval.)

Yes, sir, they are in order, and they end on March 17, 1954.

Q. All right, sir. Did D. C. Chapa have any other personal accounts in the San Diego bank other than this one represented by these ledger sheets during the period covered there?

A. I couldn't say. I believe he had one in his name and in his wife's name too, but I don't have a record with me of those accounts, and I do not know the years they cover.

Q. That was Chapa and his wife?

A. Yes.

Q. D. C. Chapa, individually, himself, did he have any other accounts than this one?

A. Not to my knowledge and recollection.

Q. I show you Government's Exhibit 77-A through 77-FFFF—

Mr. Foreman: What did he say? 77-what? 77-A through what?

Mr. Wilkey: 77-A through 77-four F's.

—what are they?

A. Those are deposit slips, original deposit slips made out to the account of D. C. Chapa with the San Diego State Bank.

Q. Are Exhibits 76-A, et cetera, and 77-A, et cetera, part of the records of the San Diego State Bank?

A. Yes, sir, they are.

Q. Are they regularly and correctly kept?

A. Yes.

Q. Kept in the normal course of business?

A. Yes, sir.

Mr. Wilkey: Your Honor, we offer in evidence Government's Exhibits 76-A, et cetera, and 77-A, et cetera.

Mr. Foreman: We move that that be limited to D. C. Chapa, and object to their being received as to each of the defendants on each of the counts.

The Court: Was that what you were handing the jury now?

Mr. Wilkey: No, Your Honor. The ones I am offering are before counsel now.

The Court: What says the Government to the objection.

Mr. Wilkey: We offer them on the part of the general scheme to defraud, in relation to the transactions alleged in the indictment under the general scheme and plan.

The Court: They will be so received. The objection is overruled, and Government's Exhibits 76 and 77 are admitted into evidence as to all defendants and on all counts.

Q. (By Mr. Wilkey) Mr. Lopez, in making deposits in the San Diego bank, how are the matters deposited listed on the deposit slips?

A. As a general rule, he writes on the deposit slip.

Q. And what category, if any, are they broken down?

A. I understand. They are broken down as currency, silver, and the deposit slip has several lines to itemize checks separately.

Q. All right. In the years 1951, 1952 and 1953, what was the practice of the San Diego State Bank in regard to the listing of currency, silver and checks on these deposit slips?

A. Well, we were allowed to list the total of the checks as a whole.

Q. To list the checks as a whole. How about currency and silver?

A. They have to be set down separately.

Q. Currency and silver have to be set down separately?

A. Yes.

Q. Would you look through those 13 deposit slips, and see if you can find and call out the amount, if you do, of any cash, that is currency and silver, deposited to the account of D. C. Chapa—correction, deposited to the account of the tax collector, Benavides Independent School District.

Mr. Foreman: What are those deposit slips you have?

A. Benavides.

Q. Was there any cash deposited during the period covered by this account?

A. Just one deposit, sir.

Q. How much was that in cash?

A. In cash, $25 currency, and $15 in silver, a total of $40.

Q. Are you familiar with the microfilm records of the San Diego State Bank?

A. Yes, sir.

Q. Will you describe the microfilm records, what they cover?

A. Microfilm records, that we use in the bank, have photographs of local checks or local items, checks on our bank, and checks on the outside banks, what we call transit items, and deposit slips and other records that are valuable that we made—also take pictures of those.

Q. For example, what kind of an item would be a check drawn on an account in the Texas State Bank of Alice, and processed through your bank? What do you call that?

A. We call that a transit item, an outside bank item.

Q. Would that be recorded on your microfilm records?

A. Yes, it would.

Q. Were you using a microfilm record system in 1949?

A. Yes, we were.

Q. Did you use it in the years 1950, 1951, 1952, and 1953?

A. Yes, sir.

Q. Are you still using it?

A. Yes, sir.

Q. Where are the microfilm records kept?

A. In the vault, in the bank vault.

Q. And in what form are they kept? In what kind of container?

A. Spools. The microfilm, after it is developed, is put on a spool and it is put in a box, and we mark the number of days or weeks, or the date it covers, and it shows how many days of local items are photographed in that certain spool and how many days of transit or other bank items are photographed on that certain spool, and the box is numbered like 1 to 100 in sequence.

Q. Now, then, to your knowledge were those microfilm records of the bank present in January, 1954?

A. Yes, sir.

Q. Were those microfilm present in February, 1954?

A. At the start of the month, yes.

Q. How about at the end of the month?

A. No, sir, they were not. Not from a certain date backwards.

Q. Did you have occasion, during February, 1954, to look into that vault for the microfilm records?

A. Yes, sir.

Q. About what date was that you took a look for the microfilm records, if you remember?

A. It was the week, I believe, of the 15th and ending about the 20th, I guess. Somewhere in there.

Q. The week of February 15, 1954?

A. Yes, sir.

Q. Do you recall about what day of the week it was that you looked?

A. It was a Monday, sir.

Q. Monday of that week. What did you see?

A. I went to check the cabinet, and the drawer that we kept the films in, and they were not there, sir.

Q. What period of time was missing—rephrase. What period of time did the missing microfilm cover?

A. It covered from the time we started taking pictures on those films.

Q. Until—

A. Until the last film we had received back already developed.

Q. All right, sir. Did that cover the years '49, '50, '51, '52 and '53?

A. Yes, sir, it did.

Q. Has any of that microfilm record ever been returned to the bank, to your knowledge?

A. Not to my knowledge.

Q. Have you ever seen it since sometime prior to February 15, 1954?

A. You mean prior?

Q. Have you ever seen it since the day prior to February 15, 1954?

A. Prior—we had them on records there in the vault.

Q. Prior to the 15th of February, 1954?

A. Yes, sir.

Q. All right, sir. What else is kept in the vault where the microfilm records are kept?

A. We have a small safe where we keep the currency.

Q. Was any of the cash missing from the bank vault on that day?

A. No, sir.

Q. Was any other item of value missing from the bank at that time?

A. No, sir.

Q. Was there any evidence visible to your eyes of the vault having been broken into?

A. Not that I remember, no, sir.

Q. Was there any evidence of the bank building itself having been broken into?

Mr. Foreman: May it please the Court, that is calling for a conclusion. As to anything that was there, I have no objection to. As to anything that wasn't, that is asking for a conclusion of the witness.

The Court: I will sustain the objection. He may testify whether the bank has ever been broken into to his knowledge, but it does call for a conclusion that particular question.

Mr. Wilkey: No further questions, Your Honor.

The Court: It is now about four minutes of five, and the jury is reminded of the instructions previously given. Court is adjourned until 9:30 tomorrow morning.

MORNING SESSION—MAY 16, 1957.

(The following proceedings were held out of the presence and hearing of the jury.)

The Court: Will the record shown these proceedings are without the presence and hearing of the jury.

Gentlemen, I am concerned about the motion for mistrial made late yesterday afternoon during the interrogation of the Witness Gonzales. I suppose you gentlemen have read the Fifth Circuit decision, Nalls vs United States?

Mr. Bottler: Yes, Your Honor, I believe that we have read the decision.

Mr. Foreman: No, sir, I haven't burdened my mind with much law at all, having had the benefit of Mr. Sharpe.

Mr. Sharpe: I haven't read that particular one. I haven't that citation.

The Court: From Mr. Foreman's language in the motion, I thought he had read it.

Mr. Sharpe: What is that citation, Your Honor.

The Court: It is in the advance sheets. I also have the original opinion of the Fifth Circuit of January 31, 1957. The citation is 240 F. 2nd 707, and I would be glad to hand this copy down for examination of counsel for both sides, if the Government does not have it. I have indicated on Pages 6 and 7, including the footnotes, which may be pertinent.

Mr. Bottler: Let me see if I can get a copy for our own use.

The Court: Maybe you had better get one of your

own. It is January—or you can get the advance sheet. It is 240 F. 2d 707.

Mr. Foreman: Your Honor, we have 2 or 3 other cases to that effect, which I am sure if the Court—I don't know whether they are cited in there or not.

The Court: From the Fifth Circuit?

Mr. Sharpe: No, sir, not the Fifth Circuit, but it is uniform. If the Court would care to read them, they are not as recent as this, but they are as strong as this.

The Court: Well, there are a number of cases cited here. I haven't read them. I have only read the Nalls case.

Mr. Sharpe: Your Honor, I would like to say this: I worked on this last night until about eleven o'clock, and I didn't quite get this far along in the advance sheets. I got so tired, I went to bed. Undoubtedly there are a half a dozen cases that support our position on this, and the leading case appears to be McKnight vs U. S., 115 F. 972. The case was reversed on this very point.

The Court: That is an old case.

Mr. Sharpe: 115 F. 972, and then another case that was reversed on the same point is Hibbard vs U. S., 172 F. 66.

The Court: Let me see if your cases are cited in the footnotes.

Mr. Sharpe: Still another case, very recent case, which has a good decision on principle, is Himmelfarb vs U. S., 175 F. 2d 924, in which the court refused to reverse solely and only because the trial court found that the jury did not hear what went on. In that case, the United States Marshal served a subpoena duces tecum in the courtroom while in the presence of the jury, and the court said the prejudice that resulted from that action, whether the defendant objected to it or not, was the inference if the defendants did not produce records they were guilty of something. There were a number of others, but the McKnight case, the Himmelfarb—

The Court: What is Himmelfarb?

Mr. Sharpe: 175 F. 2d 924. I think those three cases alone, added to the Nalls case, are extremely powerful in support of our position. There are others.

The Court: I want to give the Government an opportunity to read it.

Mr. Foreman: Your Honor, the source of my language was a lifetime experience in these courts. It has been the practice from Judge Hutcheson—

The Court: You said "dare" and the Nalls case says "challenge".

Mr. Sharpe: I do notice one thing in the footnotes of the Nalls case of Graves 150 U. S. 118 is cited there. I read it last night, and either the McKnight case or the Hibbard case, or both of them, cite that as authority.

The Court: Yes, sir.

Mr. Wilkey: Your Honor, I hvae read that case. I think like any other case, particularly where a question of mistrial arises, it must be considered in the light of the full circumstances of what occurred. Now, my recollection of the questions put by Mr. Foreman and the questions that I put to the witness Gonzales yesterday was this:

First of all, on direct examination Mr. Gonzales had testified that he had brought with him certain checks, bank statements and tax rolls for the years 1952 and 1953, and that there were no more checks or bank statements other than what he had brought for 1953, and none for 1952 and 1951.

The Court: I remember all that. Let's start on this premise: I want to say that I think your comment was gratuitous and unnecessary. The only thing that concerns the Court right now is, has there been such a legal injury to the defendants' rights as to justify a mistrial.

Mr. Wilkey: That is the question to which I am addressing myself, Your Honor, and the point is I don't think it can be decided without a careful review of the questions that went before. Now, to Mr. Foreman's question, when Mr. Foreman got the witness, he brought forth by very skillful cross examination, with the permissive use of leading questions—

The Court: You know the defendant has much wider latitude in those matters than the prosecution.

Mr. Wilkey: But let me go on, if I may, and I think

Your Honor should have the transcript of Mr. Foreman's questions before him when he rules on this, as well as the questions I asked on this subject immediately after I got the witness back.

The Court: Well, I don't think I need that. The jury can infer whatever they want to from Mr. Foreman's questions, but the motion here is directed to the statement of the prosecution.

Mr. Wilkey: I recall when I got the witness back and went into this particular subject, I asked him if he had other statements, other checks, other records, and I specified some of the other records, and then I said, which I believe is the question objected to, "Are you willing to bring—

The Court: I will let you see it, if you want to see it.

Mr. Wilkey: That will be helpful.

(The Court tenders a transcript to the prosecuting attorney.)

"Are you willing to bring whatever other records remain in the School District office there which may be relevant to the case at the request of either defense or prosecution, if we specify the records?"

The Court: I want to get this straight in my thinking. I said I thought your statement was gratuitous and unnecessary, and I will direct it to one word only, and I think the defendant's motion is directed to that one word only, and that is the word "either defense," or the phrase "at the request of either defense or prosecution."

Mr. Wilkey: All right, I can see that, of course, if that had not been in there, there could not remotely have been any motion for mistrial.

The Court: There could not have been. I would not have even considered it. I won't say I wouldn't consider it, but I would promptly have overruled it without delay.

Mr. Wilkey: My question, are you willing to bring—I had reference to this: I think the context of the inquiry shows this was the meaning of it. I did not mean to put into evidence all of this roomful of records that was in that office, or to imply that the defendant should put into evidence all that roomful of records. I merely meant they should be made available for both sides to examine and see if there were any other bank statements and checks, and the phrase "at the request of either defense or prosecution," was put in to imply that both sides could have access to those records.

The Court: I understand that perfectly, and I will say again that, as I said twice before, I thought the statement was gratuitous and unnecessary. It is unnecessary certainly because the defendants have competent counsel and they know what they can do.

Mr. Wilkey: I also call to your attention the phrase "if we specify the records." Now, Your Honor, I don't think that that question in itself is a comment on a failure of the defendants to produce evidence or not to—or because they haven't had a chance to up to now, or failure if in the future they fail to produce such evidence, because

my question was related to the time Mr. Gonzales was on the stand, which was in the middle of the prosecution's case, and I wanted, by that question, to indicate to the jury that Mr. Gonzales could and would bring such records, and I intended to follow it with a request he do so, and put him back on the stand again. I don't think that implies anything more than that. I don't think it is any comment on the failure of the defense—

The Court: Let me say this now. If I may make some observations—I don't know whether I have a right to or not, but the jury is not present now—my feelings about the matter, and I can't look into the minds of the jurors, but my observations are that actually no damage was done. My only concern is, whether there was an actual damage or not, has there been a legal damage.

Mr. Wilkey: All right. On that point, Your Honor—

The Court: I say my own observations are, and I say again, I don't know whether I have the right to make those or not, but my own observations are no actual injury was done. The question was asked casually, and there is some doubt in my mind whether the jury would pick up the fine point or not. Alert counsel did.

Mr. Wilkey: I will say this, when Mr. Bottler and I walked to the Bench at Mr. Foreman's suggestion, neither one of us had any idea of the implications Mr. Foreman would attach to the question. We argued on that coming up. We looked at each other—

The Court: I will say for whatever it is worth, the only

thing that gets any lawyer in trouble are gratuitous and unnecessary acts.

Mr. Wilkey: I realize that, sir.

Now, as to the legal point, whether legal damage was done, what Mr. Foreman has said in effect is that we have advanced an argument at the time that the defendant should produce this evidence. You note Mr. Foreman has not said we have argued that they should testify. He has said, we should produce evidence. The argument that the defendant should produce evidence in the hands of a third party is a perfectly permissible argument. It is one we could make and would have made at the end of this case, had Mr. Gonzales not come forth with these records and testified these records did not exist. We should have argued, I think permissibly to the jury, if there were records down there, they were subject to subpoena and Mr. Gonzales could have been called for the defendant. They were in the hands of a third party—I wouldn't argue that, but they are equally available to the defense as well as the prosecution.

The Court: Isn't that true that the witness in the Nalls' case—

Mr. Wilkey: No, there was something more in the Nalls case.

The Court: I know there was, but let's come to these things orderly. I know what you are thinking about, but in the Nalls case it says, "Morover, such a proceedings was inherently unfair to the defendant. If the Government's

counsel wanted to advise the defendant that the witnesses were available, he could have done so privately."

Mr. Wilkey: That gets to the context of the circumstances here.

The Court: By the same token, you could have privately told Mr. Foreman, "Mr. Foreman, those records are subject to subpoena by the defendants, if they want to subpoena them."

Mr. Wilkey: Now, I think I can point out the difference in our situation and the Nalls case. Mr. Foreman had basically told the jury this, 'Mr. Gonzales, there is a roomful of records there and—"

The Court: That is right, but I will depart from this case. Defense counsel is not subject to all the limitations the prosecution is.

Mr. Wilkey: But it is our understanding that when the defense counsel, not being subject to certain limitations, opens up certain things the prosecution has not gone into originally, then the prosecution has the right to go into it fully.

The Court: Then the prosecution can subpoena additional records, if he needs additional records, but I don't think he can tell the defendant in the presence of the jury 'He is available to you to go down and get them."

Mr. Wilkey: This will be the distinction from the Nalls case. In the Nalls case, nothing had been introduced into the record, as far as I can tell, about the witnesses stand-

ing in the hall until the prosecution informed the defendant in front of the jury there were three other witnesses who would testify, and their testimony would be cumulative, an opinion, of course, of the prosecution. In our case, we had the whole issue opened up and introduced by Mr. Foreman, getting testimony there was a roomful of records, which could reflect records this witness had been subpoenaed and had not produced. I went back and asked him if he was willing to produce them here for both of us, or either of us, which I thought a fair way to put the question. Your Honor says he could subpoena this Witness Gonzales to bring those. The truth of the matter is, he had already been subpoenaed, and in the last trial testified the records he brought were all that there were, so Mr. Foreman got him to testify there were a roomful, and we didn't know whether there were any more of the type he brought or not. We had to develop the testimony to see what there were and could they be produced here.

The Court: Mr. Foreman could have made all the comments along those lines he wanted to, and there would have been no danger of a mistrial.

Mr. Wilkey: I am aware of that, but at the same time the defense cannot have carte blanche to go into things and make suggestions of things that may or may not be true without inviting a perfectly legitimate rejoinder of the prosecution. Our rejoinder to that was to ask the witness if he was willing to bring those records here. I was going to ask him to do so.

The Court: I think if you had said, "Mr. Gonzales, are you willing to bring the other records," I don't think any

harm would have been done, but the only think that is bothering me is where you say "Will you bring them at the request of either defense or prosecution."

Mr. Wilkey: I want to get back to this, Your Honor, that even if I had not asked the question, with the issue Mr. Foreman had already opened up, it was contrary to the situation in the Nalls case, in that in the Nalls case, first, the prosecution in that case in argument could not have said to the jury, " I have three other witnesses waiting in the halls who could have testified, but I didn't call them."

The Court: According to the Nalls case, it doesn't make any difference if he said it in argument or when he did.

Mr. Wilkey: Let me get to this because there is an important distinction here in our rights in this case as compared to the rights of the Government in the Nalls case. In the Nalls case, the prosecution could not have argued to the jury he had other witnesses there which he did not call because the defendant did not interject that issue, therefore he couldn't argue it, but when he commented on it in the line of the prosecution's case, which was argument, that was improper. In our case, Mr. Foreman interjected the roomful of records which might or might not contain the very records Mr. Gonzales was subpoenaed to bring. My answer to that argument was "Gentlemen, if they are there and it would help the defendant, don't you know the defendant would have asked Mr. Gonzales to produce them here"? I am sure this is the law, and I will cite one very good lawyer who publicly so stated it. We have a right to point out to the jury that if it is in the

record of the case evidence was available to the defense, just like it was to the prosecution, and to draw, if that is interjected into the case, and to draw any inference from the failure to produce evidence, in that this evidence is in the control of a third party. It is not evidence in the control of the defense.

We would not have a right to comment on evidence in the control of the defense, but this is evidence in the control of a third party and we have a right to draw a inference from it.

The Court: The witnesses in the Nalls case were witnesses not in control of the defense.

Mr. Wilkey: But the prosecution stated they were there and available.

The Court: Here you say the records are there and available to the defense.

Mr. Wilkey: The distinction is who interjected the issue. In the Nalls case, the prosecution, whose were these three witnesses, named them in court when he could have done it privately. Here Mr. Foreman has interjected the roomfull of records being available so I have the right to argue to the jury, 'If those records would help the defense, they would put them in evidence," so I have a right to ask about them during the course of the trial, the issue being put in by the defense. That is different from the Nalls case. I will cite the one good lawyer I recall who stated very clearly the principle that a jury has the right to draw inferences from the other side's failure to produce evidence. Your Honor may recall the Army-McCarthy hearings, Joseph Welch who proved himself a fine lawyer—

The Court: That is not a criminal proceeding.

Mr. Wilkey: But he stated the rule of criminal law that I have found in the books since then, and I will get cases. It is a well established principle of law that comment may be made by one party on the failure to produce evidence by the other party when it is available to the other party, and that is right, and we have that right, and in the present trial we did exercise it in argument because the defendant interjected the issue in argument by referring to witnesses that had been subpopenaed and he said, "Mr. So-and-so," and raised the predicate by bringing it out on the stand other witnesses were present in the hall who had not been called and would have been argued, why were the witnesses not called, and we got up and said, 'If it would have helped the defense, don't you know the subpoena power works for both sides."

The Court: Did you say that is the rule in criminal cases?

Mr. Wilkey: Yes.

The Court: What would be the occasion for it? That was not a criminal case he appeared in.

Mr. Wilkey: I didn't intend to imply Mr. Welch stated it was a rule in criminal cases. It was a rule of law.

The Court: That is true in civil cases that may be commented on.

Mr. Wilkey: It is true in criminal. We can get cases to support it, that it is.

The Court: Someone should have told the Fifth Circuit.

Mr. Wilkey: The issue in the Nalls case is the issue of those people being available was interjected by the prosecution. In this case, it was interjected by Mr. Foreman to which we had a right to make reply in argument or by questioning the same witness there, and in the last trial, I again refer to the example of this same principle being used when Mr. Foreman drew forth the fact that two or three other witnesses were in the halls who might have evidence to give and we did not call them. In argument, he said, 'Where was so-and-so," and we answered, 'So-and-so was here," or "We don't know where so-and-so is, but the subpoena power of the court works for the defense and the prosecution, and if they know anything that would help the defense, they have the power, as we do, to put them on the stand." That was answering an argument advanced and interjected in the case by the defendant. As I have said before, we would not have had the right in argument to say, "We had two or three other people here we could have called, but we didn't," but he put the issue in first and we answered in argument and answered properly, and that is what we did here, and the Nalls case hinges on the fact that the prosecution threw the thing in first and that is why I argued the Court must take the context here. Ours hinges on the fact that Mr. Foreman interjected the issue of other records being available here which might bear on this case, and as I say, and we will get cases to support it, we could, on this record, argue to the jury that "if those records of Gonzales would help, don't you know the defendant would have produced them in court for you to look at." That is a third party, and we could argue that.

I think Mr. Bottler may have some observations here.

Mr. Bottler: With respect to the Nalls case, I would point out there were several matters discussed in the Nalls case, and the point actually raised by the defense was the fact that the district attorney had stated he had additional testimony to corroborate the witness' testimony. It had nothing to do with whatever records that the witness might have had on the stand, and the actual point at issue in that case was the statement of the Government's attorney that he thought that the witness' testimony, who was standing out in the hall, would be cumulative. In effect, it was a third witness.

I believe that in many cases involving voluminous records it is an essential part of the case to show that such records are available for examination when you are trying to prove something either from those records or something that does not exist, and as a matter of fact it is an element which precedes going further in the case. For example, voluminous records from which an accountant might testify that something was there or something was not there. You have to show that these records are available to the defense, and as a matter of fact that has been done in this case twice already without objection. The simple short little statement that Mr. Wilkey made "was he willing to bring it," this Government witness had been subpoenaed to bring—

The Court: I think that statement by itself would have been perfectly proper and without any question at all, "are you willing to bring." The only thing that gives me any concern is, 'at the request of either defense or prosecution."

Mr. Bottler: Well, Your Honor, I will just state this, that the very diligent defense counsel has seized on every opportunity or every little clause in this case—

The Court: As he is there to do.

Mr. Bottler: That is correct, and I am not saying that he should not, but I don't believe the jury could possibly assume that they were being charged that the burden of proof is not on the Government.

The Court: No, as I stated before, my own observations are I don't think any actual injury has been done, and I will say again, because it is on my mind, I don't know whether I have the right to make these observations or not, but the only thing that concerns me is, is there a legal injury.

Mr. Bottler: Your Honor, I would say this, that the Court is going to charge the defense at length on the legal—

Mr. Foreman: You mean the jury.

Mr. Bottler: The jury. The Judge will instruct the jury at length on the burden of proof, where it exists during the entire trial, and that the jury is going to listen to the Judge. I don't think there is any likelihood that they could make what I consider a pretty far inference from what we thought was a simple question, that was going to make them think that the duty was on the defendants to prove their case instead of the Government. I would also—I think Mr. Wilkey has covered the other point about the matter being raised by the defendant. I would also point

out that defense counsel's first objection to this was that it was immaterial, and not whether the witness was willing. I think this is an afterthought. It is trying to make a mountain out of a molehill. It dealt with a matter gone into by the defendant, and it is not the Nalls case.

The Court: I wouldn't say it was an afterthought. It was seized on rather quickly.

Mr. Bottler: It was a second thought.

The Court: That is true.

Mr. Bottler: There was a ruling by the Court on the materiality.

The Court: That is correct.

Mr. Foreman: May it please the Court, I am going to be more charitable to the prosecuting attorneys than they have heretofore been to my clients. I am going to concede an innocent intent for the purpose of replying to the argument.

The Court: I will concede that.

Mr. Foreman: I do not believe they intended—

The Court: I believe that, let me say.

Mr. Foreman: I do too, Your Honor. I believe that the very able District Attorney and his equally able assistant did not intentionally do anything wrong, improper, or

anything that would cause a mistrial. I don't think that anybody sitting and getting ready for this case to that extent—but nevertheless, whether they intended to do something or not is not the issue. I used to know a singer, a baritone singer who sang as an encore a limerick which has served me in good stead to illustrate this point many times. He sings:

"There once was a girl from Ostend,
"Who swore she'd hold out to the end,
"But the swell of the ocean
"Filled her with emotion
"And she did what she didn't intend."

That is the stuation in which Mr. Wilkey finds himself now.

We will acquit him of any intent, vile or vicious intent, or any intent at all but to be the zealous prosecutor that he is, but with reference to his various interpretations as to his rights as a prosecutor and his rights to do anything that the defense counsel can do, that is usually the argument. It is what the Court directed the Court's observation to when you used the black stick of candy. What is sauce for the goose is not always duck soup for the gander. I don't agree that my asking the man why certain records weren't produced here authorized him to say "But the defendant can come and prove what those records are, and we just dare them to do it." That was the inference. As to whether it did or not, take into consideration the source—

The Court: It wasn't that pointed.

Mr. Foreman: I know it wasn't. Your Honor, and I agree, but sometimes we go to extremes to make a point, but nev-

ertheless I am directing it, and it would be unbecoming to me to suggest to the Court, with the mind for detail such as the Judge of this Court has, anything that isn't in the record, but this Court or any other finite mind could not know to what extent even this jury might comprehend or to what significance it might attach. I do appreciate the candor, forthrightness, and honesty in Mr. Wilkey telling Your Honor why he did it. Let's suggest for a moment so he could argue it, so he could make a speech telling the Court what he was going to say, laying a predicate for argument. If no harm has now been done, the harm will come when the very eloquence of the combined oratorical forces of the prosecution get to argue the point he was laying the predicate for. The harm isn't done now; it is the meeting of the minds for the conspiracy of carrying out what we are accused of doing here. The harm would be the closing of this eloquent orator, and he has so frankly told you so. Even so, as the Court has observed, the Court is unable to know what some man with native intelligence, without the education of attorneys of the prosecution or defense or Court might have, and the law zealously protects the rights of the individuals without giving us the right to go into and probe that. We haven't the power to do it, the effect it might actually have on the defendants' rights when the jury starts considering them. We call the Court's attention—the Court has already answered his observation on part of defense counsel when the Court very charitably, at least so far as this counsel is concerned, referred to those representing the defendants as competent counsel. The prosecuting attorney says that he has a right to because I established the fact that there were other records there, to ask to detail, to suggest that they were available and he might bring them in by subpoena, or this man will do so if we ask them. May it please the Court,

at the time and before he made that, and from the practice of what this and other cases, Mr. Wilkey knew that we knew that. It gets back to what the Court said, he could have told us outside. He knew he didn't need to testify. It is what the Court means by gratuitous. He knew we knew how to get out the process either duces tecum or personal appearance, therefore it was uncalled for, and uninvited in the presence of the jury. I think Mr. Wilkey is entirely correct in his legal conclusion that he has the right to make any, as he calls it, perfectly legitimate rejoinder to any question, but the question is, is this perfectly legitimate? The Court of Appeals for the Fifth Circuit has said in an almost analogous White Horse case, it isn't legitimate and therefore it isn't perfectly legitimate, There is something like at least sixteen other cases, and probably twenty-one, as we have told the Court, going back to before any officers sitting in this courtroom were born, establishing this rule of law, so that has been absorbed gradually over the years as a part of the courtroom technique and our thus not knowing from whence it came, not the case of any authority, but the universal rule for the trial of cases in this jurisdiction.

Now, this is the final point to which we are diametrically opposed to the prosecution in its conception of the law. Mr. Wilkey stated at least twice, and I think three times, that he had a right to comment in argument, and therefore presumably in the trial when evidence was equally available to the prosecution and to the defendant. That is not the law, never has been the law. I don't have any authority for it, can't produce any. The authority is, the rule is, that the prosecutor cannot comment on failure to produce witnesses or evidence when it is equally available to both sides. He cannot comment on the failure of the defense to pro-

duce a witness or to produce evidence when it is equally available to both sides, but Mr. Wilkey, the nearest rule of evidence he can—that would approach that, and if he is confused, this is the rule to which he is directing his observation. He does have a right to comment on the failure of the defendant to produce a witness who is particularly under the control of that defendant, such as an employee, and that is the only comment authorized, as we can see the law, that he has with reference to our producing or not producing a witness. That, I think, is elementary.

In view of the fact that the Court is concerned about this and has the benefit of the Nalls case, and while we are on the point we feel that we owe to the Court the research that was done for some three or four hours last night on this point, and we have the books laid out and I ask permission of the Court to point up the other authorties to the Court by either way, presentation or argument, so that the Court may see how far back this rule of law goes in years and over what a wide area of the Unted States it extends.

The Court: Well, this is obviously a question I don't want to handle lightly. I do want the benefit of those cases. I want to study them. I am not going to rule now. I want both parties to furnish—both sides to furnish briefs.

I announced at the beginning of the week we would devote five full days to the trial of this case this week. A dear friend passed away yesterday morning, and I have been asked to serve as pallbearer at his funeral tomorrow afternoon, which will be at four o'clock tomorrow afternoon at Pasadena, which means at best we would have adjourned court by three o'clock tomorrow afternoon. I would like to have the briefs from both sides to study over the week

end so I will ask both the prosecution and the defense to have your briefs in my hands tomorrow afternoon.

A few minutes ago I thought we were going to spend more time on this and I sent word to the jury they could be excused until eleven o'clock. All of us will take a recess until eleven o'clock.

(Short recess.)
(The following proceedings were had in the presence and hearing of the jury.)

Mr. Wilkey: I believe Mr. Lopez was on the stand, Your Honor.

The Court: Very well.

Mr. Wilkey: If the Court please, I have a few more questions of Mr. Lopez, if I may?

The Court: Very well, sir.

6-1351 JOSE LOPEZ,

being the witness who was on the stand at the time court recessed on May 15, 1957, resumed the stand at this time, and continued his testimony as follows:

6-1352 DIRECT EXAMINATION
(Continued)

Q. (By Mr. Wilkey) Mr. Lopez, I hand you what has been identified as Government's Exhibtis 77-A through 77-

FFFF and ask you, if you will, to go through there and pick out the deposit slips on which, according to your bank records there, cash was deposited to the account of Mr. D. C. Chapa?

A. I had better go through them one at a time.

Q. Just call them out, if you will.

A. This one here by which the currency and silver shows $100.27.

Q. Tell us the date, please?

A. October 5, 1952, $100.27.

Q. All right, sir.

A. October 18, 1952, $100 currency. This is the account of D. C. Chapa.

Q. Yes, the account of D. C. Chapa.

A. November 3, 1952, $150. November 13, 1952, $400.

Q. All right, sir.

A. November 14, $1125.

Q. All right, sir.

A. December 9, 1952, the distribution is under the line for silver, $582.75.

Q. All right.

A. On December 31, 1952, $300.

Q. All right.

A. On January 17, 1953, $5.88 silver.

Q. $5.88. That is five and eighty-eight, or $5.88?

A. Yes, sir. On February 19, 1953, $143.79 silver. On April 24, 1953, $300 in currency. On May 25, 1953, $90 currency. On June 9, 1953, $200 currency. On June 17, 1953, $232 in currency.

Q. All right.

A. On September 19, 1953, $100 currency.

Q. All right.

A. On October 5, 1953, on the silver line shows $499.82.

Q. $499.82?

A. Yes.

Q. All right, sir.

A. On January 7, 1954, $200 currency. That is all, sir.

Q. All right, sir. Now, then, since I wrote those down while you read them off, will you read off just the amounts in the column under '52 and '53 in order that counsel may check his notation so we will have them all down in the right amounts.

Mr. Foreman: If he is talking about me, I will take care of my part of the case. If he is doing it for the jury, we will object to it as repetitious.

The Court: Sustained.

Q. (By Mr. Wilkey) Well, just add up the columns for 1952. You may add up for 1953, too, if you will. What is the total of the cash deposit, according to the deposit slips, in 1952 to D. C. Chapa's account in the San Diego State Bank?

A. $2,938.02.

Q. What is the total for 1953?

A. $1,571.49.

Q. And how much in January 1954, according to your deposit slips here?

A. One deposit, $200.

Q. Thank you very much, sir.

Now, at this time, Your Honor, we would like to offer

in evidence two exemplified copies from J. M. Faulkner, Banking Commissioner of Texas, in regard to the San Diego State Bank. Counsel has had an opportunity to see these before.

The Court: Have they been identified?

Mr. Wilkey: Yes, they are Exhibits 42 and 43, I believe.

Mr. Foreman: Exhibits 45 and 46.

Mr. Wilkey: Exhibits 45 and 46.

Mr. Foreman: May it please the Court, we ask that these be limited to the San Diego State Bank and to the names of anyone who is, and as to any individual who is a defendant whose name appears on the Board of Directors.

Mr. Wilkey: We submit, Your Honor, that they are admissible on the scheme to defraud, particularly in regard to the allegations of control exercised by the defendants over the San Diego State Bank.

The Court: By all defendants?

Mr. Wilkey: Yes, Your Honor, as part of the conspiracy in which all defendants are alleged to have participated.

The Court: It will be so received. Objection overruled,

and Government's Exhibits 45 and 46 are admitted in evidence.

Mr. Foreman: Your Honor, there is—I am not arguing with the Court, but I want the Court to have the benefit of the actual law. There is no allegation that all of these defendants controlled this bank. The only allegation is in Paragraph C of Section—of Count 16 alone, it is alleged that they established and maintained control of the San Diego State Bank by its president, director and chairman of the Board of Directors, George B. Parr, and Mr. Parr is the only one that appeared here.

Mr. Wilkey: If your Honor will read the first part of Count 16, it is alleged that the defendants plural would do certain things.

The Court: May I have it, please. Government's Exhibits 45 and 46 are admitted in evidence.

Mr. Wilkey: I will read you from Government's Exhibit 45 here, Acceptance of Directors, July 13, 1949, San Diego State Bank of San Diego, Texas, "We, whose names are signed below, being citizens of the United States and residents of the State of Texas, do, each for himself and not one for the other, accept the position of director of the San Diego State Bank of San Diego, Texas, and solemnly promise that we will severally so far as the duty devolves on us, diligently and honestly administer the affairs of said bank; and that we will not violate or knowingly permit any officer, director or employee of the bank to violate any of the provisions of the Statutes of the State of Texas, under which the said bank has been organized; and each

for himself states that he is the bona fide owner in his own right and in his own name, of the number of shares of stock required by said Statutes; and that the same is not hypothecated, nor in any way pledged as security for any loan or debt. We hereby, each one for himself, authorize the secretary of the board to enroll our names as directors of the San Diego State Bank of San Diego, Texas, having been duly elected at a stockholders meeting of said bank held on the 13th day of July, 1949," and there follows the signatures of the directors accepting who are listed here as George B. Parr, Chris S. Hinojosa, Jr., E. G. Lloyd, Jr., H. J. Mosser, and C. G. Palacios.

I will not read the other acceptances which are dated July 11, 1950, July 10, 1951, July 15, 1952, July 14, 1953, and July 27, 1954, and are signed by the parties as indicated thereon.

I will now read from Government's Exhibit 46, which is a Certificate of Increase of Capital Stock and Amendment to Articles of Association.

"State of Texas, County of Duval, We the undersigned, George B. Parr, President, and C. G. Palacios, cashier of the San Diego State Bank of the City of San Diego, State of Texas, hereby certify that at a meeting of the stockholders of the said San Diego State Bank held on the blank day of blank, 1951, pursuant to the provisions of Article 12, Chapter 3, and Article 2, Chapter 4 of the Texas Banking Code of 1943, a proposition was duly submitted to increase the capital stock of said San Diego State Bank from $50,000 to $100,000; that upon said proposition the consent of the persons holding two-thirds amount in value of the stock of said San Diego State Bank was given, viz: 497 votes in favor of and none votes against it and

that therefore, the capital stock of said San Diego State Bank is hereby increased from $50,000 to $100,000, and that said increase is actually subscribed and paid up in cash and the Articles of Association are amended as shown herein. San Diego State Bank by George B. Parr, President."

Pass the witness, Your Honor.

6-1358 CROSS EXAMINATION

Q. (By Mr. Foreman) Mr. Lopez, who is this C. G. Palacios, cashier? Did he have any other office in the bank?

A. At the present time, sir?.

Q. Both. Does he now have any connection whatever with the bank?

A. Well, he is running the office for the San Diego State Bank in liquidation, but I believe he resigned the position as liquidating agent, if I am not mistaken.

Q. How long ago?

A. Not over six months ago.

Q. Then the answer is that he has no connection with the bank now?

A. No, sir.

Q. And what was—was he or not vice president and cashier on October 5, 1952?

A. Yes, sir.

Q. Find this silver deposit for October 5, 1950—I think it is 77-000.

A. October 5, sir?

Q. Did you find it? Yes, October 5, 1952. He called it off as $499.82.

Mr. Wilkey: I believe you are inadvertently saying 1952. I think it's 1953.

Mr. Foreman: I appreciate the correction.

A. It is October 1953, sir.

Q. I don't know. I thought it was 1952. Yes, I believe he is right. It is 1953.

A. $499.82, yes, sir.

Q. See who received that deposit. See if the office of whomever received it is shown on the deposit slip.

A. There is no signature to it, but it is typewritten V. P. and Cashier.

Q. Who could that refer to? Is there any more than one person that could have been, on that date, vice president and cashier except C. G. Palacios?

A. No, sir.

Q. Then, in your best judgment, based on the records of the bank, and as you see it there, who did receive that deposit on October 5, 1953?

A. Mr. C. G. Palacios.

Q. Now, let's look on through a few dates just while we have got this thing open, and to keep me from getting back up here. That was the one where it was silver $499.82, on October 5, received by Mr. C. G. Palacios?

A. Yes.

Q. The next deposit here was a note dated October 23, 1953, for $2000?

A. Yes.

Q. Would that be his note, he executed a note that day?

A. The deposit receipt — the deposit slip is signed by an R, and that is—corresponds to an employee there in the bank. Romell Salinas.

Q. And you don't know who signed that note?

A. No, sir.

Q. Mr. Lopez, with reference to the credit on Mr. Chapa's note account for October 5, the same date as that silver deposit of $499.82, find it for me on which every one of these is, the note ledger sheet.

A. The note ledger sheet? All right, sir. The liability ledger shows that a note was paid on that date. It shows the amount of—maybe it could have been a total of several notes. I don't know, but it shows a payment of $7,623.40, and a note for $2,980.

Q. Then would the difference between $2,980 and $7,623.40 be the amount that was paid?

A. Yes, sir.

Q. Have you computed that to give us the exact figures, whatever that amounts to?

A. $7,623.40—

Mr. Wilkey: I can't hear the witness.

A. I was telling Mr. Foreman here, to arrive without using paper, deduct $3,000 from $7,623.40, which would leave $4,623.40 and add $20 more.

Q. Approximately $4,680 paid otherwise than this note?

A. $4,643.40.

Q. $4,643.40 is the amount it was reduced?

A. Yes, sir.

Q. Tell this jury if you had anything to do with the transaction, if the money was paid to you or if you know what individual paid it, whether Mr. D. C. Chapa paid it or some one paid it for him or someone else paid other than D. C. Chapa? Do you have any recollection whatever of any transaction of which or when the $4,640 was paid? Do you know how it was paid on Mr. Chapa's notes on October 5, 1952?

A. No, sir, I couldn't say anything unless I had the records with me, sir.

Q. What records would you need?

A. I would need the credit and notes, sir, and I would need the new note that was made for that day.

Q. Well, I know what the new note that was made for that day means, because you make a new note, but the first is something that is peculiar to your banking knowledge that I am not privileged to know. Would you tell me what you mean by the first instrument you mention?

A. A credit means when a customer goes to a bank, we use a slip of a paper with a red credit marked on the slip, and then we date the slip whatever date, and then we put down the number of the note and the name of the signer of the note and the amount he paid. It could have been full payment, it could be partial payment on a note, and that slip of paper could contain several payments on different notes.

Q. I see. Then, Mr. Lopez, that is a regular banking record that would be available for subpoena, the memoranda that you now describe, the credit?

A. Yes, sir.

Q. And you could tell, as I understand, by an examination of that record and by whomsoever filled it out with his name or initials, which appear on that note, so as to distinguish as to what individual in that bank may have received on behalf of the bank the $4,643 on October 5, 1952—1953, I mean?

A. Sometimes we initial the—like if I had received it I should initial it, but sometimes we do not, sir.

Q. And you do not have that credit memorandum here?

A. Not that I know of.

Q. You were not subpoenaed to bring it?

A. Unless it was subpoenaed last time, but I do not remember.

Q. At any rate, it is not now here for this jury to look at so they would know who in this bank received the $4,643?

A. We don't have that record.

Q. Then taking into considering that on that same day by this 77-000, October 5, 1953, $499.82 in cash was received as a deposit and credited on this deposit slip to the account of D. C. Chapa, and that that money was received by C. G. Palacios, Vice President and Cashier, as shown by that slip, and based on your knowledge of the operations of the bank, whom in your best judgment received whatever money was received if any was received as a credit on that note?

A. I would assume Mr. C. G. Palacios had received the note payment.

Q. Now, is it or not usual or unusual to have someone come into the bank with $499, silver dollars? That would be a memorable occasion? It would be easy to recall?

A. That is right.

Q. And you have—where is this C. G. Palacios at this time? Do you know whether or not he is living, and if so, where?

A. Mr. Palacios lives in San Diego, Texas, and he is in the insurance business.

Q. When did you last see him?

A. Last week sometime.

Q. Is he apparently healthy, up and about?

A. Yes, he is.

Q. Was he present here last November as a Government witness?

A. He was subpoenaed, I believe, by the Government, yes, sir.

Q. Do you know whether that same C. G. Palacios has appeared here before a Federal grand jury in this court house in connection with the investigation of the very transaction about which you are now testifying?

A. In this term?

Q. I don't mean at this term of court, but prior to the returning of this indictment or subsequent to it?

A. By the grand jury, sir?

Q. Yes.

A. Yes, sir, he was here.

Q. Have you seen him here this time, Mr. Lopez, C. G. Palacios?

A. No, sir.

Q. Do you know whether he has been directed to be here?

A. To be frank with you, I asked him because we always try to come together, and I asked him if he was subpoenaed for this session going on, and he said he hadn't been subpoenaed.

Q. Now, Mr. Lopez, we have established that these are parts of the D. C. Chapa deposits, or rather ledger sheets. Didn't you state that there was, in your judgment, yet another, of D. C. Chapa and his wife, a ledger sheet?

A. This is the note ledger sheet, sir.

Q. Well, we will take away the note ledger sheet.

A. And this is the Benavides.

Q. This is the Benavides Independent School Distdict?

A. Yes, sir.

Q. How many accounts of D. C. Chapa, himself and his wife, how many separate accounts did you have?

A. To the best of my knowledge, sir, he had a personal account and he had a joint account with his wife. I can't quote the years or the length of time.

Q. That is all right. Now, do you have—we have a record of the deposits. Do you have a record of the withdrawals from the Benavides Independent School District tax collector's petty cash account so as to determine whether or not each check written on this account between December 13, 1951 and February 13, 1953 was expended for school business? Yo do not have any record?

A. We do not have any record at the present time.

Q. You have no knowledge whether it was or was not?

A. No, sir, I couldn't say.

Q. With reference to the transaction of October 14 on this 1953, find me that, please, sir? You are familiar, more familiar than I am.

A. The 14th?

Q. Now, how much was the note account total reduced on that day?

A. $2,980.

Q. It was reduced that much?

A. Yes, sir.

Q. That is October 14, 1953?

A. Yes, sir.

Q. Approximately nine days after the October 5th? Exactly nine days, wasn't it?

A. Yes, sir.

Q. Now, Mr. Lopez, did you have anything to do with that transaction? Do you recall receiving, on behalf of the San Diego State Bank, that $2,980?

A. Well, like I said before, sir, I have to check our records to see who received it. I could tell by my handwriting.

Q. And were you asked to bring any such record?

A. No, sir.

Q. And you do not have it at this time?

A. Not with me.

Q. And without that you would not be able to say whether you did or not? Do you have, independently of that, any recollection of having received either this or the other, the $4,640?

A. No, sir.

Q. Isn't it true, Mr. Lopez, that—I withdraw that. I hand you what was marked Defendant's Exhibit 10 which purports to be the personal, as distinguished from the mutual account of he and his wife, of D. C. Chapa's account that, and what is it?

A. This is the bank record of the checking account of D. C. Chapa, Benavides, Texas, but it doesn't say the name of the bank. Pardon me, yes, it does—no, it doesn't. No.

Q. Before we get into this, and with reference to these two dates of October 5 and October 14, Mr. Wilkey presented certain checks selected by him and established by you that these checks cleared through your bank on October 5 and on October 14. Do you have any way of knowing whether or not, in addition to these checks, whether 5, 10, 15 or 50 other checks were likewise payable to the Benavides Independent School District, collected on the same day, the same day that these he picked out and presented to you were collected?

A. Well, pardon me, sir, but if they were for big amounts, I would have to go back to our records, and if they were paid, we would mark it that they were Benavides School District checks.

Q. Pardon me, I didn't mean to interrupt. Amounts as to big or otherwise had nothing to do with my question. I had only asked if you had any way of knowing whether

or not either on the 5th or the 14th the checks that Mr. Wilkey presented were the only Benavides Independent School District checks, that is, checks payable to them, that went through your bank for collection or otherwise?

A. Not to my recollection, no sir.

Q. You don't know whether the five he presented, I believe it was five, for the 5th—

Mr. Wilkey: Four, I believe, on each day.

Mr. Foreman: Four each time? All right. You do not know whether the four Mr. Wilkey selected and presented to you were all? There may have been 8, 10, 12 or 16 each of those days made thereon?

A. Yes, sir.

Q. So that when you state they cleared, you are only stating those individual checks cleared, and as to whether any others did or not, you do not know?

A. That is right, sir.

Q. Mr. Lopez, please find on that individual account ledger sheet of the D. C. Chapa account an item of $623.53, a check sometime in November of 1952.

A. Well, Mr. Foreman, pardon me, but this is not our bank record here.

Q. That is not?

A. No, sir.

Q. What is that?

A. That must be some other bank record.

Q. Those are the ones I just laid over there.

A. Well—

Mr. Foreman: I am at a loss.

You testified in this case last November, didn't you, Mr. Lopez?

A. Yes, I did.

Mr. Foreman: I would like the help of the prosecuting attorney in this event. Do you know where this came from? It was my recollection it came from him at the last trial.

(Conference between counsel for the Government and counsel for the defense.)

Mr. Foreman: That is the San Diego Lumber & Hardware account. I am sorry.

A. What date was that, sir?

Q. Here is the check.

Instead of Defendant's Exhibit 10, we want to correct the record to Government's Exhibit 76-A, being the D. C. Chapa account, Box 852, Benavides, Texas, and just for the record let me count the pages.

The Court: Eighteen I believe, from my information. Eighteen pages.

Q. There is a total or eighteen, but the page that it is on, so that the jury might find it, it is on the 10th page, is it not?

A. Yes, sir.

Q. The 10th page of Government's Exhibit 76-A. Now, will you just put a circle around where it appears on that statement?

A. Yes, sir.

Q. Just circle it.

(Witness complies with counsel's request.)

You have circled it, and this is the point, $623.53, isn't it?

A. Yes, it is, sir.

Q. Now, this is shown on Page 10 of 76-J in the third column of figures, and the date is shown of November 14, 1952, is that correct?

A. Yes, sir.

Q. What does this $623.53, November 14, 1952, mean?

A. A check, withdrawal rather, by check.

Q. It means that a check was charged for that amount of money on the 14th of November, 1952?

A. Yes, sir.

Q. To D. C. Chapa?

A. Yes.

Q. Will you hold that up to the light, the perforation, and tell us what date that check for $623.53 was paid by the San Diego State Bank?

A. The date, sir?

Q. Yes.

A. November 14, 1952.

Mr. Foreman: Then are we required to offer this again? We offered this once. It was already offered at the former trial.

Mr. Wilkey: We had to offer all of our records. I believe it is proper.

Mr. Foreman: All right, then, we are offering Defendant's Exhibit 6.

The Court: I believe the agreement was that they could be—use the same numbers. We wouldn't have to renumber them.

Mr. Foreman: That is the way I numbered it.

The Court: Defendant's Exhibit 6. Is there objection?

Mr. Wilkey: Your Honor, I believe it is immaterial at this time. I think the witness can identify it, but as far as the offer goes, I believe it is immaterial at this time. We will waive objection to it.

Mr. Foreman: I was trying to keep from holding the witness here for another 10 or 12 days.

Mr. Wilkey: If he said he could identify it, Your Honor, that is sufficient from the witness, but we have no objection to the exhibit.

The Court: Defendant's Exhibit 6 is admitted in evidence.

Mr. Foreman: May I read it to the jury, Your Honor.

The Court: You may, sir.

Mr. Foreman (Reading): "San Diego, Texas, November 4, 1952, San Diego State Bank, pay to the order of San Diego Lumber & Hardware, $623.53, Six hundred and twenty-three dollars and 53/100 dollars. For office materials. Signed O. P. Carrillo and D. C. Chapa."

Who is O. P. Carrillo?

A. The man standing up over there, sir.

Q. What relation is he to D. C. Chapa?

A. He is the son of Mr. D. C. Chapa.

Q. And what is his occupation?

A. Mr. O. P. Carrillo is an attorney.

Q. And do you know when he started in his law practice in San Diego?

A. About the late summer or early fall of 1952.

Q. Now, was there any difference in the manner in which the banking and making of notes, making of deposits of D. C. Chapa and Oscar Carrillo, in fact the whole Carrillo-Chapa family, the way they transacted their banking business prior to the time O. P. Carrillo started practicing law in the late summer or early fall of 1952, and after that time?

A. Well, Mr. O. P. Carrillo rented offices on the second floor above the San Diego State Bank, and after he graduated there, took his exams from law school, he opened those offices and he took care of a lot of the father's and brother's business.

Q. By saying O. P. Carrillo took care of a lot of his father's and brother's business, you mean the banking business?

A. I am referring to the banking business, yes, sir.

Q. Isn't it true frequently, and that for long periods of time, you wouldn't see his brothers or his father, but all the banking business, the deposits, presentation of checks, and so forth, would be conducted—

Mr. Wilkey: That is leading, Your Honor. He is going into new material at this time, obviously, by introduction of new evidence.

The Court: What says defendant?

Mr. Foreman: I will withdraw it, Your Honor.

The Court: Very well, sir.

Q. (By Mr. Foreman) How often did you see D. C. Chapa after O. P. started taking care of the family bank-

ing business, as distinguished from before he started doing so?

A. That is kind of hard to say, sir, but he didn't come as often as he did before that.

Q. You say he didn't come as often as he did—who do you mean?

A. Let me get this straight. Mr. D. C. Chapa was saved a lot of trips to the bank for the simple reason that his son came to San Diego every day from Benavides, Texas.

Q. I see. Do you know whether or not O. P. Carrillo made this deposit of $499.82 on October 5 of 1953?

A. No, sir. I couldn't say who made the deposit, no, sir.

Q. Who were the others of the family besides D. C. Chapa for whom O. P. Carrillo attended to their business?

A. His brother Oscar, sitting over there, and Romero, another brother.

Q. Romero Carrillo.

A. Yes, sir. I believe that is about all I can think of right now.

Q. By the way, with reference to this check—may I have it a moment, please? Do you recognize this endorsement on this check?

A. Yes, sir, I do. That is the San Diego Lumber & Hardware Company endorsement.

Q. What is the letter in there?

A. J.

Q. And who owned the San Diego Lumber & Hardware Company?

A. Actually it is owned by one family, several members, but it is run by Mr. Jose Tovar, manager.

Q. When Jose Tovar presents a check for cashing, how does he identify himself?

A. According to the check, he signs the letter J to the endorsing stamp.

Mr. Wilkey. May we have that read back.

The Official Reporter (Reading): "Answer: According to the check, he signs the letter J to the endorsing stamp."

Q. Have you seen him do that on occasions?

A. I wouldn't say that I have seen him do it, but he brings the deposit already endorsed and initialed.

Q. Have you seen him present checks with this identical rubber stamp facsimile and with the J in it, as it appears on this check?

Mr. Wilkey: Your Honor, we object to the leading nature of the questions. It is clear he is going into new matter entirely unrelated to direct examination.

Mr. Foreman: I will rephrase.

Tell us how or on how many occasions you have ever seen sample endorsements on checks with the J in it? Who has presented them to you, if anyone, in the San Diego State Bank?

A. Those checks when they are deposited, sometimes they are brought by some employee of the firm. Several people might bring it.

Q. Have you ever seen Jose Tovar himself do that?

Mr. Bottler: Your Honor, he is leading the witness again. The same objection.

The Court: What says the defendant?

Mr. Foreman: I don't think it is leading, but if there is any doubt about it I would rather rephrase it.

The Court: Very well. I suggest you do so.

Q. (By Mr. Foreman) You say some of the employees have brought such checks over, that is with San Diego Lumber & Hardware Company with the J in it. Have you ever seen anybody that wasn't an employee do so?

A. No, sir. Those deposit slips are made in their offices, and we don't know. We don't know who put the rubber stamp. The deposit is already made out. In other words, it is by the time it reaches the bank.

Q. Have you ever seen Jose Tovar himself make a deposit?

A. Not in the bank or in his office, no, sir, I never have.

Q. Well, I don't mean have you ever seen him fill out a deposit slip, Mr. Lopez. I mean have you ever seen him come to the bank with a deposit for the San Diego Lumber & Hardware Company? That is what I had reference to, not making out a deposit, but delivering it to the bank?

A. Yes.

Q. Have you ever seen him present checks endorsed in that manner with a J?

A. I have seen several, but I couldn't swear any particular deposit had the J.

Q. I am not asking you about any particular one. I am asking you about if at any time when Jose Tovar presented a deposit, have you ever seen them marked with a J in them like this?

A. When I was a teller, yes, sir.

Q. Now, who were the employees of the San Diego State Bank in 1952 and 1953?

Do you mind if I mention and ask him if there were any others than these? I can save about nine questions.

Mr. Wilkey: It's agreeable to us, Your Honor.

Q. State whether or not, in addition to yourself, these were other employees of the San Diego State Bank: C. G. Palacios, Anjelmo Garcia, Amelia Garcia, Romero Salinas, Carlos H. Garcia, Jewell Mayfield. Were those all employees of the bank during the years 1952 and 1953?

A. They were employees of the old San Diego State Bank about the time it went into liquidation, sir, but actually I believe we had all those employees, except Carlos Garcia. I am not sure when he started.

Q. Who you didn't have is not my question. It is who you did have in 1952 and 1953.

A. Mr. Carlos Garcia could have been there, but I am not sure, Mr. Foreman. The rest of the employees, I am sure they were there.

Q. Then yourself, C. G. Palacios, Anjelmo Garcia, Amelia Garcia, Romero Salinas, and Jewell Mayfield, and there were six including yourself you are sure of, or perhaps one extra, Carlos Garcia?

A. Yes.

Q. Any others?

A. In the summer, especially when the employees went on vacation, we hired a schoolboy to help us with the bank work.

Q. Now, Mr. Lopez, when was the bank—who owned the San Diego State Bank before the Parrs bought it?

A. The Hoffmans, the Hoffman family.

Q. Was the vault changed, the combination, when the Parrs bought it?

A. I believe it was, yes, sir.

Q. When was it the Parrs ought it?

A. In the spring of 1945.

Q. And from that time until you left there—when did you leave, 1954?

A. August of 1954—no, pardon me, sir. The new bank

stayed in the San Diego State Bank quarters up to April of last year, when we moved to our new bank building.

Q. Then from the time it was sold in 1945 until April of last year, was the combination changed?

A. I believe it was changed again when Mr. Parr—the San Diego State Bank went into voluntary liquidation.

Q. But meanwhile, until it went into voluntary liquidation, from the time it was bought in 1945, was the combination the same?

A. It was the same until August of 1954—1945 until August, 1954.

Q. Who had keys to the bank?

A. Most of the employees that I remember, and Mr. Hoffman, the owner that owned the bank, he had kept his office there in the bank building.

Q. And he had a key?

A. Yes, sir.

Q. From time to time, did the special employees have keys?

A. No, sir, I don't think so, just the regular employees.

Q. Mr. Lopez, did any of these defendants, from Oscar Carrillo around to O. P. Carrillo, ever pay any note account, to your knowledge, with a Benavides Independent School District check, either a check drawn on the Benavides Independent School District or a check payable to the Benavides Independent School District?

A. No, sir.

Q. May I have those exhibits?

I will ask one question to have six or seven.

I am going to present you certain checks that you were asked about by the prosecution, which I hope will include the four checks asked about as of October 5th and 14th, ask about as of October 14, 1953, being Gov-

ernment's Exhibit 44, the Beall check, Government's Exhibit 60-A, the Dinn check, Government's Exhibit 58-A the Gasoline Production Corporation check, Government's Exhibit 59-A, Pitzer & Sons check, Government's Exhibit 50-A, the Hagist Ranch, Incorporated check, Government's Exhibit 47, Texas Consolidated Oil check, Government's Exhibit 56-A, the Sid and Meyer Katz check, and ask you if you cashed any of those checks?

A. Pardon me, Mr. Foreman. You mean pay the actual cash?

Q. Yes, sir.

A. I wouldn't have knowledge of it, sir. Aren't those on those deposits? Couldn't they be deposited to that account, or something.

Q. I am asking whatever you may know.

A. I couldn't remember if I cashed them or not.

Q. You do not know?

A. No, sir.

Q. Do you recall the occasion for the opening of the account, the petty cash account, with the San Diego State Bank?

The Court: Will we spend much time on the petty cash account? It is almost twelve.

Mr. Foreman: Well, I don't intend to, but I would as soon stop here.

The Court: Go ahead with your question.

Mr. Foreman: There will be two or three questions on it. I will just ask this one question. Do you recall the circumstances, the conversation that preceded or corresponded to

the opening of this account represented by Government's Exhibit 74, the Benavides School District tax collector's account, petty cash?

A. No, sir, I do not.

The Court: Very well. Court will recess until 1:45.

AFTERNOON SESSION—MAY 16, 1957

(The following proceedings were had out of the presence and hearing of the jury.)

The Court: Be seated.

Mr. Wilkey: When the Court asked us to present a brief on this mistrial by tomorrow afternoon, we did not at that time offer—ask for any extra time or anything of that sort, but in settling down after we got out of the courtroom to consider what physical problems we face in gatherng authorities and putting them in any form, and I may say we do not plan an elaborate brief, but something which will be intelligible to the Court, we were confronted with these physical dfficulties. In the presentation of this case, Mr. Bottler and I will be in the court until five o'clock this afternoon. The type of research needed is somewhat lengthy. It is a situation of looking for cases which might be in point or bear on the question. We don't expect to find White Horse cases. It takes time. Then we have the problem of putting them in some sort of form for the Court tomorrow, and at the same time conducting examination of witnesses here in court tomorrow. We have consulted the Department of Justice on this problem

this morning, and they are working on the matter, and I am sure they will have something for us.

The Court: You want the assistance of anything they send you, and I would like to have it.

Mr. Wilkey: Yes, sir.

The Court: You could have it ready Monday morning, I am sure?

Mr. Wilkey: I can have it ready earlier. This is the suggestion I was going to make. The Department of Justice can furnish us information by tomorrow morning. We could have the thing in shape for the Court by three o'clock tomorrow afternoon, if we are not in court, since we are not going to work a full day. My suggestion is to excuse the jury tomorrow, Friday, and put the thing in the hands of the Court tomorrow afternoon, and the Court carry out its original plan to consider it over the week end and rule on it Monday.

Mr. Foreman: You mean we don't have the jury at all tomorrow?

Mr. Wilkey: Yes.

The Court: We will recess trial this afternoon until Monday morning, and briefs will be filed Monday morning.

Mr. Foreman: My associates raised the same point, but we figured with the whole United States at the beck and call of the prosecution, we might be able to equal them tonight.

Mr. Wilkey: It doesn't quite work that way. As the Court can see, there are four attorneys at the defense table and two here, and people at the beck and call are not necessarily at the beck and call as defense counsel suggests, and not all we would wish to ask.

The Court: You mean Mr. Brownell is not working on this now?

Mr. Wilkey: I don't think he is. I would like to get his assistance, but I believe it is the subordinate echelons.

The Court: Yes. What says the defendant?

Mr. Foreman: We don't want to be unfair to the prosecution, Your Honor.

The Court: Very well. I will accept that suggestion, and we will excuse the jury this afternoon until Monday morning.

Mr. Wilkey: Thank you very much, Your Honor.

The Court: And Mr. Foreman, this morning I handed you my copy of the Nalls case. I would like to have it returned. I think you can get it from the advance sheet, can you not?

Mr. Foreman: Yes, sir. We have the advance sheets.

The Court: Very well. I would like to have my copy. Thank you. Call the jury, please.

(The following proceedings were held in the presence and hearing of the jury.)

6-1387 JOSE LOPE,

being the witness who was on the stand at the time court recessed for lunch on May 16, 1957, resumed the stand at this time and continued his testimony as follows:

6-1387 CROSS EXAMINATION (CONTINUED)

Mr. Foreman: Would you read my last question back?

The Official Reporter (Reading): "Do you recall the circumstances, the conversation that preceded or corresponded with the opening of this account represented by Government's Exhibit 74, the Benavides School District tax collector's account, petty cash?

Answer: No, sir, I don't."

Q. (By Mr. Foreman) Do you know whether or not there were certain checks that were invariably cashed at your bank over the years dating to the time when one such check had bounced or come back from the Texas State Bank at Alice?

A. What check?

Q. Do you recall—how many years you worked there from 1924 until 1954 at the San Diego State Bank? Did you not, sir?

A. Yes, sir.

Q. Well, even back there in the early days or from 1924 up to the time the bank was bought by Mr. Parr, do you know whether T. Vaello Puig, a former tax collector—who is T. Vaello Puig?

The Court: The initial is F.

A. Francisco.

Q. Thank you. It is F. Is that Joe Vaello's father?

A. Yes, sir, it is.

Q. Do you remember when he was tax assessor-collector of the Benavides Independent School District?

A. Yes, sir.

Q. Do you know when—whether or not when he himself was director that certain checks were cashed either at your bank or the—let's see, just say your bank, the San Diego bank, from, at any time, the same people's checks we have here? Do you know whether that is true or not?

A. No, sir.

Q. Do you know whether or not it was a policy of the Benavides Independent School District to clear certain checks and deposit the money, rather than deposit the checks in the Alice State Bank?

A. No, I wouldn't know.

Q. You never worked in the offices of the Benavides Independent School District, did you, Mr. Lopez?

A. No, sir, I did not.

Q. Do you know a Consuelo Perez?

A. Yes, sir.

Q. Who is he or she?

A. She was bookkeeper for the San Diego State Bank.

Q. And about when did she work there?

A. She worked there around the late '40's and early 1951, something like that.

Q. Do you know Valta Serna?

A. He worked there in the bank.

Q. What did he do?

A. Bookkeeper too.

Q. Did each of them have keys?

A. I believe so, yes, sir.

Q. By the way, what did your—did your janitor have anything to do with your canceled checks?

A. Yes, sir.

Q. Who was he?

A. Well, he did not on account of he had to do it. He did it to help the clerks.

Q. Could he read or write?

A. Yes, sir.

Q. What formal education, if you know, did he have?

A. I don't know, sir. I wouldn't know.

Q. Then, it is rather informal, the banking at the San Diego State Bank, isn't it?

A. Well, he was very helpful, very friendly and helpful to the filing clerks, and he did it just because—he didn't have much to do after cleaning the bank in the morning or late in the afternoon.

Q. May I have 17-A through P, please, sir, a series of checks?

(Tendered to counsel.)

How long, Mr. Lopez, did you serve as a teller before this—what are you now?

A. Cashier, sir.

Q. And as teller of your bank, how long—were you teller still when you left the old bank?

A. Yes, sir.

Q. And you served there approximately 20 or 30 years, except what time you were in the service?

A. I started as a bookkeeper, second class.

Q. You had to compare signature, to determine the authenticity of the signature as a teller, didn't you?

A. Yes, sir.

Q. Those are some 16 checks listed as Government's Exhibits 17-A through P. Do you recognize the signature at the lower lefthand corner?

A. Mr. Heras signature.

Q. That is Diego Heras?

A. Diego Heras, yes, sir. They all look alike, sir.

Q. Would you look at the back of the checks, the endorsements I should say, on the back of each of these checks? I am going to ask you after you have seen those if any two of those endorsements look like they were made by the same person?

A. They don't look alike.

Mr. Foreman: You may have the witness.

6-1391 REDIRECT EXAMINATION

Q. (By Mr. Wilkey) I believe this is the exhibit I want. I show you No. 76-J here, about which Mr. Foreman inquired, in regard to the $623.53 item. Can you tell by this record who the payee on this check was?

A. The records here?

Q. Yes.

A. No.

Q. Can you tell who drew the check from that record there?

A. No, sir.

Q. From that record there, can you tell anything about what record was charged to the D. C. Chapa account on November 14, 1952?

A. No, sir.

Q. Is there, at the present time, any record at your bank which would show who drew this check and who the payee of the check was?

A. No, there is not.

Q. Was there at one time?

A. Yes, sir.

Q. And what was that record?

A. Microfilm.

Q. That would show, wouldn't it?

A. Yes.

Q. All right. I am going to ask you to do a little addition for me. Take those four checks I have shown you before, and put down the amounts and add them up, if you will.

Mr. Foreman: May it please the Court, this is purely a matter of computation. They are in evidence and the jury is capable of adding them up, or the prosecuting attorney, as a matter of fact, had added them up once before with another witness, and it is repetitious for that reason.

Mr. Wilkey: I don't recall adding them up before with another witness. It is possible we have, but I think it is permissive to make a summary here by the witness of the checks about which he is being asked by both defendant and prosecution.

The Court: It will be permitted.

A. How many checks were there? Four?

Q. There were four checks there, I believe.

A. All right, sir. $2,682.90.

Q. $2,682.90, and for the record what is the date that these checks were processed through your bank?

A. October 14, 1953.

Q. All right. October 14. Now, then, I will ask you to add up those four checks here, which I believe were processed on October 5. Use the same sheet of paper, if you wish.

For the records, the last four checks I asked him to add were Government's Exhibits 59-B, 59-A—

Mr. Foreman: 59-B? I have got 59-A.

Mr. Wilkey: Correction, please. 59-A, 56-A, 47 and 50.

A. The total of the last four checks you gave me is $5,243.22.

Q. $5,243.22, right?

A. Yes, sir.

Q. Now, then, I want you to put down the figure for October 5 that Mr. Chapa's account—by the amount it was reduced. I am going to have you add something to it, so put it down where you can add something to it. Put down the figure which Mr. Chapa's account, his note account, the amount he owed was reduced on October 5.

A. $4,643.43.

Q. All right. Would you put underneath that $499.82, being the cash deposited to Mr. Chapa's account on that day, October 5, Now, will you add the amount his obligations were reduced and the cash deposited to his account, and see what you get?

Mr. Foreman: What date are you on, please?

Mr. Wilkey: October 5.

A. $5,143.22.

Q. That $5,143.22, how does that compare with the total of the last four checks you examined?

A. A difference of $100.

Q. A difference of exactly $100?

A. Yes.

Q. To the penny?

A. Yes.

Q. Now, then, how does the—what is the reduction in Mr. Chapa's obligations on October 14? Will you write that down? I think you figured it before.

A. It is simple, sir. Take the amount there, and that is it.

Q. Is that $2,980?

A. Yes.

Q. And what was the total of those four checks you added up on the 14th?

A. $2,682.90.

Q. $2,682.90, and the reduction was $2,980?

A. Yes.

Q. Thank you. Will you identify, so we can have the record complete, would you identify this $2,682.90? Would you write out there "October 14," as being those four checks and by this larger figure "October 5."

Mr. Foreman: May it please the Court, if this is something he is writing to have it offered as an exhibit, we object to it and if it isn't, we object to it in the interest of time.

The Court: Yes, what is it, Mr. Wilkey?

Mr. Wilkey: I want him to identify the checks he has added here. I plan to offer these computations as an exhibit.

Mr. Foreman: We object to it as an attempt to get in an exhibit and thereby overemphasize something already in the evidence. We call the Court's attention to this writing. This witness heretofore testified there may have been 8, 16 or 20 checks collected there the same day. He does not know those are all, and the purpose of the pros-

ecuting attorney obviously is to attempt to suggest to the jury those were the only checks cleared, and the amount coinciding is an evidence of guilt, but they are arbitrarily selected, as far as the record shows, but we know of no rule for the witness to summarize, put his initials on it, and have it offered as an exhibit.

The Court: I will say if this is offered as a summary of his testimony, it will be allowed. We have a blackboard, and sometimes some summary of testimony is written on it, on the blackboard, for the jury and sometimes the attorney will take a piece of chalk and write on the blackboard and make additions from the testimony of the witness. I think it is immaterial whether it is in the witness' handwriting or not, and it may be admitted for that purpose and the jury is instructed that it is simply a summary of the testimony of the witness.

Mr. Wilkey: Thank you, Your Honor. That is what it is offered for.

Mr. Foreman: Just a moment. We ask that it be limited as to the defendant D. C. Chapa, if it is going to be admitted—since it is admitted.

Mr. Wilkey: Your Honor, since it is a summary, it would bear the same limitation or absence of limitation that the evidence of which it is a summary, or relates to, does.

The Court: Haven't I already ruled on the testimony, that the testimony would be applicable to the general scheme and artifice to defraud?

Mr. Foreman: Yes, I think you have so ruled, Your Honor.

The Court: Very well. The summary may be so received.

Q. (By Mr. Wilkey) Did you note here, to identify these items here, did you not note reduction in cash and put October 5 as the date?

Mr. Foreman: Your Honor, he is having him write out his testimony. I call the Court's attention to the fact that I want to renew and direct the Court, this would be an exhibit maybe a week or three weeks from now, whenever we get through with this case.

The Court: There must be some limitation to the summary. Amounts would be the same as writing figures on the blackboard, and to that extent it will be permitted, but I don't want you to reduce this man's testimony to writing. It might be necessary in probating a will, but we won't require it here.

Mr. Foreman: I assume he would have the same right to have all his testimony transcribed and have him initial it, and offer it as an exhibit. The principle would be the same. The jury can compute figures and the District Attorney can argue figures.

The Court: The District Attorney has asked to have these figures summarized, and I will permit that. I don't want him to write any dates on it or write anything else on it, and I will again instruct the jury, you will consider the oral testimony of the witness and that these summaries are simply a summary of his testimony so far as the figures are concerned.

Mr. Foreman: We have got the dates on here. I don't remember how the Court ruled on that?

The Court: I ruled that the dates should not be put on it, and if you are going to put it on, I suggest it be written again.

Mr. Wilkey: These dates were already on there before the Court ruled.

The Court: How did they get on there?

Mr. Wilkey: They were written by the witness.

The Court: The effect of the Court s ruling was we would not reduce the testimony of the witness to writing. I permitted the request of the prosecution, the writing down of the sums and the totaling of them up as a summary of his testimony, and nothing further has been permitted, so I suggest that be rewritten in line with the Court's ruling.

Mr. Wilkey: Your Honor, there are those computations, and I had him put the dates on simply to identify which was which.

The Court: May I see them again, please?

Mr. Foreman: There is a date on each, a date as to each of the checks, October 5 on one, October 14 on another.

The Court: The Court will reverse his ruling and allow the dates to accompany the figures.

(Document tendered to the Clerk and marked Government's Exhibits 215 and 216.)

Mr. Wilkey: We offer in evidence these summaries, Your Honor.

The Court: They are admitted in evidence.

Mr. Wilkey: No further questions, Your Honor.

6-1399 RECROSS EXAMINATION

Q. (By Mr. Foreman) If there were 8, 12, 16, or any other number of checks, the figures would not be so closely coinciding with the ultimate figures? They would be altered by whatever the other checks were, isn't that true, Mr. Lopez?

A. Yes, sir, they would.

Q. And you don't know whether on October 5 there were 7,000 or 10,000 or 12,000 dollars worth of checks of the Benavides Independent School District cashed there for clearance before depositing the proceeds, do you?

A. No, sir.

Q. And likewise with reference to the 14th, isn't that true?

A. That is right.

Q. Do you know who assembled this particular and peculiar total of checks for the use of the prosecution in this case?

A. No, sir, I do not, sir.

Q. Mr. Lopez, with reference to the question concerning the check 76-J, Exhibit 76-J, and Defendant's Exhibit—wait a minute, that isn't it. 76-J, the item circled here, $623.53, and Defendant's Exhibit 10—6, I should

have said. Defendant's Exhibit 6. Examining the perforation, tell us what it shows?

A. The perforation on this check, sir?

Q. Read it into the record.

A. Perforated with the word "Paid, p-a-i-d, paid," and it says—it gives the month and the day.

Q. Read it.

A. The month is 11 and 14 and 52.

Q. And what is under that?

A. S. D. S. B.

Q. What does S. D. S. B. stand for?

A. San Diego State Bank.

Q. What does 11-14-52?

A. That stands for—11 is for the month of November, 14 for the day of the month, and 52 stands for the year.

Q. 1952?

A. 1952, yes.

Q. Now, do you recognize that perforation as made by a machine of the San Diego State Bank?

A. Yes, sir.

Q. Do you recognize that endorsement as one of the customers of the San Diego State Bank?

A. Yes.

Q. On the face of it, do you recognize that signature as the signature of whom as the make of the check?

A. O. P. Carrillo and D. C. Chapa.

Q. Tell us whether or not O. P. Carrillo had authority and did write checks on this account of D. C. Chapa?

A. Yes, he did.

Q. With that check in your hand and with 76-J likewise in your hand, tell us if you can testify to this jury what the item that is circled on 76-J means, what it refers to?

Mr. Wilkey: I object, Your Honor. He is leading the witness on a subject first gone into by him, and this is his direct examination, and further more I object as calling for a conclusion from the witness there.

The Court: What is the question again?

Mr. Foreman: My question is based on this—I will rephrase it.

Tell us whether or not based on your knowledge of the bookkeeping of the San Diego State Bank as of November 14, 1952, the 20 or 18 years that you had—that would be 30 years—the 28 years you had worked there as teller, bookkeeper, and worked with the perforation, with the bookkeeping arrangements, and by examination of Government's Exhibit 76-J, the account of D. C. Chapa, and a like examination of Defendant's Exhibit 6, which is a check for $623.53, whether you can tell this jury what the $623.53 on 76-J represents?

A. It is a check withdrawn—it is a withdrawal. It is a check item, sir.

Q. Can you tell us what check it is with what you have in your hand before you?

Mr. Wilkey: That is a conclusion. He is calling for a conclusion which is a matter of argument.

The Court: I am not sure I know what he means, "Can you tell what it is." Can you identify it on that list?

Mr. Foreman: Yes, Your Honor, identify on 76-J. Defendant's Exhibit 6.

The Court: I will permit the question.

Q. Can you?

A. Yes, sir, by the perforation.

Q. Then what is $623.53 on 76-J?

A. It is a check.

Q. It is?

A. A check. This check.

Mr. Foreman: That is all, Your Honor.

6-1403 REDIRECT EXAMINATION

Q. (By Mr. Wilkey) In regard to this perforating machine at your bank, can this perforating machine be changed as to dates?

A. Yes, sir, very easily.

Q. How is it changed? Does it operate on a clock basis, or is it changed manually?

A. Yes, sir.

Q. Can you set it forward?

A. You can set it forward and backwards.

Q. Any date you want to print?

A. As long as it has the year you want.

Q. All right, sir. Now, who was the vice president and cashier of the bank during the years that Mr. Parr was president of the bank?

A. Mr. Palacios.

Q. All right, sir. After the bank of the San Diego State Bank went into liquidation in July or August of 1954, in what building did the successor bank occupy?

A. The same building.

Q. The same building as that?

A. Yes, sir.

Q. All right, and was Mr. Palacios, did he still live there in San Diego?

A. Yes, sir, he lived there.

Q. Did he on any occasion have business to conduct with the successor bank?

A. He kept his personal business with us, yes, sir.

Q. All right, now, then, in regard to this check and this ledger sheet here, looking at the ledger sheet alone without reference to any check which had ben shoved in front of your face, can you tell us from looking at that ledger sheet alone what check that represents?

A. No, sir.

Q. From looking at that ledger sheet alone, can you say any more than a check for that amount was cashed or presented or charged?

A. It could be a check or a charge against that account.

Q. Can you name the payee on the basis of that record there?

A. No, sir.

Q. Can you name the maker of the check on the basis of that record?

A. No, sir.

Q. When you put that check and this together, it amounts to a coincidence, but aside from that coincidence of acounts, can you say positively that check on that record is this check here?

A. If you go by the perforation.

Q. The perforation does have the same date?

A. Yes.

Q. By looking at that record there, could you say who the name and maker and payee was?

A. No.

Q. If a check was made and run through the perforating machine for the date of November 14, 1952, one could put this on, this November 14, 1952, at any time the perforation machine was set for that date, couldn't it?

A. Yes.

Mr. Wilkey: All right.

6-1406 RECROSS EXAMINATION

Q. (By Mr. Foreman) Do you know whether or not Mr. Palacios had access to the stamp of the San Diego Lumber & Hardware Company that is on the back of this check that the innuendo and inference is that it was manufactured?

A. No, sir, I don't think he did sir.

Q. As a matter of fact, do you know whether or not that Jose Tovar, who runs the San Diego Lumber & Hardware Company, do you know whether or not he was a witness at the last trial under process for the prosecution?

A. Well, he was subpoenaed sir.

Q. That is the same one that—whose name starts with a J?

A. Yes, sir.

Q. It is?

A. Yes, sir.

Mr. Foreman: I think I took this out of someone's hand. Did this ever get around? Will you pass it?

That is all.

Mr. Wilkey: No further questions.

The Court: Very well. You may step down.

Mr. Wilkey: Our next witness is Gabriel Garcia.

Mr. Foreman: We ask that this witness be kept here until after Garcia testifies, the one who just left. We may want to put him back on.

The Court: Will you advise Mr. Lopez to remain?

Mr. Wilkey: May I be excused to do that, Your Honor?

The Court: Yes, sir.

6-1407 GABRIEL GARCIA,

a witness called in behalf of the Government herein, having been first duly sworn on oath, testified through the interpreter as follows, to-wit:

6-1407 DIRECT EXAMINATION

Q. (By Mr. Bottler) What is your name, please?
A. Gabriel Garcia.
Q. Where do you live?
A. In Alice.
Q. Where did you live in 1952?
A. Benavides.
Q. You lived in Benavides. How long had you lived in Benavides?
A. Sixty-three years.
Q. What is your occupation?
A. I am a carpenter.

Q. Did you ever do any work in O. P. Carrillo's office in San Diego?

A. Yes, sir, I did some work.

Q. All right. What did you do in this office in San Diego?

A. I repaired his office, put some sheetrock in.

Q. Now, when did you do this work?

A. I am not positive, but it was 1951 or 1952.

Q. With whom did you discuss doing the carpentry work in O. P. Carrillo's office?

Mr. Foreman: If it please the Court, we ask that this witness' testimony be limited to the Defendants D. C. Chapa and O. P. Carrillo.

Mr. Bottler: Your Honor, at this time we will offer it only against D. C. Chapa, the conversation.

The Court: Very well, sir.

A. With D. C. Chapa, the father of O. P. Carrillo.

Q. What did he say to you about the construction job, if anything?

Mr. Foreman: That was—I understand that question. We are objecting to any testimony whether—of course, that would be limited to Chapa, but I think his limitation was as to the question, and my objection is to all of the testimony of this witness, Your Honor, and I would like for the prosecution to indicate if they are offering all of his testimony as to all defendants and all counts. I have heard the testimony and the Court will understand my motion, but I don't want to interrupt as to each question but I wanted to get it into the record.

The Court: What says the Government?

Mr. Bottler: Your Honor, aside from the conversations, we will offer it as we offer all of the other evidence in this case. Unless it is specifically limited, it is offered generally.

The Court: Very well. The jury is instructed that the testimony of this witness relating to conversations with D. C. Chapa will be considered by the jury only insofar as it pertains to the charges against D. C. Chapa and not as to any other defendants.

Mr. Foreman: I still would like for the Government—they may have already done so and I failed to comprehend, to state if they are offering all of this witness' testimony as to all defendants and on all counts.

The Court: They announced that they were offering the testimony as to all defendants except so much of the testimony as relates to conversations with D. C. Chapa.

Mr. Foreman: Well, then, I failed to understand it. Although I heard those words, I failed to get that interpretation. Then I understand it will not be limited?

The Court: I don't know what his testimony is going to be, and of course I don't know whether it will go beyond conversations with Chapa or not, but the Court has instructed the jury that they may consider his testimony as it concerns the case against all defendants except as to conversations with D. C. Chapa; that such con-

versations shall be limited to the case against D. C. Chapa alone.

Mr. Foreman: Does the Court desire that I interrupt for objections in order to perpetuate my objections, or will the Court himself make the instructions as to any the Court might feel is not admissible to others? I have objected generally, and I was trying to keep off my feet as much as possible, and speed up the witness' testimony.

The Court: Of course, I do not know what the testimony of this witness may reveal.

Mr. Foreman: It will be rather protracted, and I will be objecting more than he will be testifying unless we have some kind of agreement. May we approach the Bench?

Mr. Bottler: I suggest we proceed with this witness in the usual manner of presentation of witnesses, and if it becomes so burdensome and time consuming that we consider objections made in advance of testimony being offered—

Mr. Foreman: May it please the Court, both of us have heard all this witness' testimony, and we could explain the substance of it and the Court could consider it.

The Court: I suggest it be done.

(The following proceedings were held at the Bench out of the presence and hearing of the jury.)

Mr. Foreman: Tell him what he is going to testify to, or do you want me to?

Mr. Bottler: He is going to testify, I will tell you generally, with respect to conversations with D. C. Chapa, with installing various materials and supplies obtained from the San Diego Hardware & Lumber Company charged against the Benavides Independent School District on the orders of Mr. Chapa, those materials being placed in the office of O. P. Carrillo; that he was paid for the labor done, as opposed to the materials, by check by O. P. Carrillo himself.

With regard to a construction job on the school building, a roofing job, he will testify that he did some minor work on a roofing job; that a check was made out to him for a much larger sum; that the defendant Jesus Garza went with him to the bank, and after paying him a small amount of the check, took—kept the rest of the proceeds. At that time they went together to another man who owned and operated another lumber and hardware company in San Diego, and that there Jesus Garza gave the other man a portion of the remaining proceeds of the check, but not all of it.

The Court: You say Garza went to another lumberyard and gave another man some money. Was all this in the presence of that witness? Is that what he will testify to?

Mr. Bottler: Yes, sir.

Mr. Wilkey: That resume of the evidence, I think the conversations and all are admissible at this stage because

they are linked into the conspiracy to defraud. I think we should offer the whole business as against all defendants and all counts, conversations and all, as prima facie evidence of the scheme and fraud having been long since established.

Mr. Bottler: We will so offer it in this case, all defendants having been linked.

The Court: I don't think it is correct to say it has been established. There is some testimony to that effect, but there has been no finding by the jury yet. I think it is proper to charge the jury as I have charged them, and that conversations with Chapa should be considered against Chapa alone, but the evidence of the acts and conduct of Chapa and others may be considered by the jury as against all defendants. What says the defendants?

Mr. Wilkey: That would be satisfactory to the Government, Your Honor.

Mr. Foreman: Of course the defendants would rather the Court would only limit it to admissibility as to all defendants, rather than tell them the acts and conduct can be charged against them.

The Court: Didn't I say considered?

Mr. Foreman: Just admitted. If the Court will say it is admitted to all of them, and say it to us here—

The Court: Is there any difference in saying it is admitted or can be considered?

Mr. Foreman: When a judge says something can be considered, it means to a jury it should be considered and you must consider it.

The Court: When you say admitted, doesn't that say to them they can consider?

Mr. Foreman: Not necessarily as effective or as strong, in our opinion.

Mr. Bottler: I would like to object for the record. All this conversation is outside the hearing of the jury.

The Court: What does the defendant want to make here?

Mr. Foreman: Just the same as we made before all the way through, just preserving the rights, trying to, of each individual defendant, by objections, and we have a different conception—

The Court: You know what the summary of the evidence is now. Do you want to make an objection now?

Mr. Foreman: Yes, sir. We want to ask that any testimony of this witness concerning O. P. Carrillo and D. C. Chapa be limited to O. P. Carrillo and D. C. Chapa, and any concerning J. G. Garza be limited as to J. G. Garza, and not admitted as to the other counts, to the other defendants, except those he specifically testifies by name, and we also ask that it all be limited to the 20th count, the conspiracy count, since it is not set forth in any of the specific counts.

The Court: The objection is overruled, and I will instruct the jury, if further instruction is necessary, as I have instructed them, and I don't think it is necessary.

Mr. Foreman: I don't think they should be instructed at all, and we would rather they not be instructed. The admissibility is all we are proving, our bill.

The Court: All right.

(The following proceedings were had in the presence and hearing of the jury.)

Q. (By Mr. Bottler) You stated you had a conversation with D. C. Chapa concerning this construction in O. P. Carrillo's office?

A. Yes, sir, I did.

Q. What did Mr. D. C. Chapa say to you concerning this construction work on O. P. Carrillo's office?

A. He told me he wanted me to do some repair work and fixing up in O. P. Carrillo's office.

Q. Where were you to get the materials and supplies to use in this construction job?

A. He told me to order from Tovar Lumber Company.

Q. To whom were the materials and supplies to be charged?

Mr. Foreman: May it please the Court, we object to that question as leading and suggestive. The witness hasn't testified anything was to be charged to anybody. The suggestion and inference is that Mr. Chapa told him to charge it to somebody.

The Court: Objection sustained.

Q. (By Mr. Bottler) Were the building materials and supplies charged or not?

Mr. Foreman: We object to that. We have no objection to whatever may have been said, but we ask that this witness limit his testimony as to what was said. As to what he did out of the presence of these people is something else, but they can be chargeable only with what any one of them said.

The Court: Is this the first work you were speaking of?

Mr. Bottler: This is for the work on materials on O. P. Carrillo's office.

The Court: Materials purchased from him, or materials he knows about, from the Tovar Lumber Company?

Mr. Bottler: Yes, from the Tovar Lumber Company.

Mr. Foreman: Materials he ordered.

Mr. Bottler: He was the carpenter on the job.

The Court: And you want to ask him whether it was paid for in cash or whether it was charged, if he knows?

Mr. Bottler: Yes.

The Court: Very well. You may, but I suggest you not lead him.

Q. (By Mr. Bottler) Were those materials paid for in cash as you ordered them, or were they charged?

A. Mr. Chapa told them to charge them to the Benavides school.

Q. And when you purchased materials, did you charge them to the Benavides School?

A. Yes, the lumberyard did.

Q. All right. Now, what did you do in the office of O. P. Carrillo?

A. I put up some partitions and recovered it with sheetrock.

Q. All right. Now, where is that office located? Where was it located?

A. Upstairs of the San Diego bank.

Q. Where is the lumberyard of Mr. Tovar?

A. Just across the street, and the other corner from the bank.

Q. All right. Now, did anyone else work with you on that construction job?

A. Two men with me. My son worked and there also was an electrician doing some other work.

Q. All right. What was his name?

A. You mean the electrician?

Q. What was the name of the electrician?

A. Elias Chapa.

Q. And how long did you work doing the construction work there in O. P. Carrillo's office?

A. Three weeks.

Q. Now, who paid you for the labor that you and your son did?

A. O. P. Carrillo paid me.

Q. Did he pay you in cash or by check?

A. He gave me check.

Q. Did you ever sign any delivery slips for materials furnished from the San Diego Lumber & Hardware Company?

A. Yes, sir.

Q. Out of what has been marked for identification as Government's Exhibit 101, I will show you a delivery slip No. 9767 and ask you if you recognize this name on here which purports to be G. Garcia?

A. Yes, sir, that is my signature.

Q. Is that how you signed on all of the delivery slips from the San Diego Lumber & Hardware Company you did sign on this job?

A. Yes, sir. I signed the same way.

Q. What was the amount of the building materials and supplies that you ordered through the San Diego Lumber & Hardware Company?

A. It was over $500, but I don't remember the exact amount.

Q. Now, did you see O. P. Carrillo about the time you were doing the work on his office?

A. Yes, he was there frequently.

Q. Was there anyone else there with him?

A. Another young fellow, a friend of Mr. Carrillo's by the name of Ornales.

Q. Is that Roberto Ornales?

A. Yes, sir, Roberto Ornales.

Mr. Foreman: I don't object to the information, but I object to the leading nature, and the suggestion.

The Court: Objection sustained.

Mr. Bottler: Your Honor, his objection was not to the answer, as I took it, but only to the question?

The Court: I think what it amounts to was asking you not to lead the witness, and I now ask you not to lead the witness.

Mr. Bottler: All right, Your Honor.

Have you ever done any work for the Benavides Independent School District?

A. Yes, I did some repair work.

Q. What repair work did you do for the school district?

A. I repaired the roof of the garage, the school garage.

Q. And what work did you do on the school garage?

A. There was another man worked, and I just helped fix the roof.

Q. Did anyone work with you?

A. There were other men there from Pedro Trevino's place.

Q. Who hired you for this job?

A. Jesus Garza.

Q. When did you do this work?

A. I am not sure, but it was 1951 or 1952.

Q. Now, how long did you work on the school bus garage?

A. Two weeks. There was two places to be patched up, so it took me two weeks.

Q. Is that on the school at Benavides or the school at Freer?

A. The Benavides school.

Q. How were you paid?

A. When the work was over, they pay me at the rate of $10 a day. My son was also working with me.

Q. Your son was working with you?

A. Yes, sir.

Q. Where did you get paid?

A. Jesus Garza brought me a check and asked me to go with him to Alice to have it cashed.

Q. Did you go with Jesus Garza to Alice to get the check cashed?

A. Yes, sir.

Q. What did you do when you got to Alice?

A. We went to the bank.

Q. Which bank?

A. The Alice State Bank.

Q. And what did you do in the bank?

A. He tore the stub off the check. The lady teller told me to sign on the back of it, and asked Mr. Garza to sign it before she would cash it.

Q. You signed the check?

A. I signed it and also Mr. Garza.

Q. Did you get any money when you cashed the check?

A. They give it to me, but immediately I pass it over to Mr. Garza.

Q. How much did you receive?

A. $2050.

Q. Did you ever testify that you received $1050?

A. Yes, but it was a mistake on my part, but now I have with me the stub that he attach from the check when he cash it.

Mr. Foreman: Mrs. Logan, I could not catch all your words, please, ma'am?

The Interpreter: He said he had made a mistake when he testified it was $1050, but now "I have with me the stub that he attach from the check before cashing it."

Q. When did you find that stub?

A. About a month, or a little longer. I found it among my old papers I always keep at home.

Mr. Bottler: Would you mark this as Government's Exhibit 217?

(Document tendered to the Clerk and marked as Government's Exhibit 217.)

Q. Is or not Government's Exhibit 217 the stub that you just pulled out of your pocket and handed to me?

A. Yes, that is the same one.

Q. Is this the stub that was attached to the check you cashed at the bank?

A. Yes, the same one.

Mr. Bottler: All right. The Government offers in evidence Government's Exhibit 217.

Mr. Foreman: I call the attention of the Court to the date. We have a running bill on that, transactions occurring before September 1, 1951, and we further—according to my notes—well, that can go to the weight rather than the admissibility.

The Court: Very well. Government's Exhibit 217 is admitted in evidence.

Q. (By Mr. Bottler) For the record, is the date 8-31-51?

A. Yes, sir, that is right.

Q. Now, what did you do after you gave the money to Jesus Garza?

A. From there we went back to San Diego.

Q. When were you paid?

A. As soon as we left the bank, when we were outside, he paid me.

Q. How much money did he give you?

A. $200.

Q. Where did you go after he paid you the $200?

A. We went to San Diego. We went to Pedro Trevino's.

Q. When you say "we went," who is we?

A. Mr. Garza and myself.

Q. Do you see Jesus Garza here?

A. Yes, sir.

Q. Is he the gentleman standing?

A. Yes, sir.

Q. What did you do when you got to Pedro Trevino's in San Diego?

A. Mr. Garza told me that he owed Pedro Trevino $500, and he counted out some money, I do not know how much.

Q. Now, did he count—after he counted out the money, what did he do with the money he counted out?

A. The two were talking, and I saw Mr. Garza counting out some money, but I didn't see when he handed it over to Pedro. I believe he did, but I am not so sure he did.

Q. After he counted out the money, did he have any money left in his hand or not?

A. You mean Mr. Garza? Yes.

Q. What did you do after you left—what happened after he counted out the money?

A. When he counted the money to Trevino, then we went back to Benavides.

Q. What did you do after you got to Benavides?

A. He left me home. That was the end as far as I was concerned.

Q. All right. Now, I believe you stated that you worked on the roofing job, that your son did, and some more men from Pedro Trevino's. Did anybody else work on that roofing job on the school bus garage?

A. Francisco Carrillo and another man whose name I do not remember.

Q. What part of the work did the men from Pedro Trevino's do?

A. They put the gravel on the roof with the asphalt on the roof. They laid the paper, put the gravel, and then the asphalt.

Q. All right. Now, what was the total amount of money you received from Jesus Garza?

A. $200.

Q. How was your son paid, do you know?

A. I paid from the $200. I paid my son.

Mr. Bottler: No further questions.

6-1426 CROSS EXAMINATION

Q. (By Mr. Foreman) Have you testified anything here that you testified to last November except that you did the work on the office and on the roof? Haven't you answered every other question as to checks or figures differently?

A. What I have said is the same except for the error I made in stating the amount of $1050 instead of what is stated on this stub.

Q. You didn't testify last November that you saw the exact amount paid to Pedro Trevino, and that it was $500, no more, no less?

A. I don't remember having stated that.

Q. Do you remember that you did not state that? Do you remember stating anything about you didn't know how much Pedro Trevino was paid when you testified last fall?

A. I just stated the same thing, that he told me he was going to pay him $500, and I didn't see the exact amount paid.

Q. I am not asking what happened. I am asking what you testified about. Didn't you testify in a former trial of this case last November that you knew how much Pedro was paid, and he was paid $500?

A. I don't remember having testified that way, sir.

Q. Did you not talk with Pedro Trevino after he testified he had been paid $720, and didn't he show you his books that he had paid him that?

A. No, sir, he has never talked to me and I have never talked to him.

Q. And with reference to the payment of your son, what did your son receive when he worked with you?

A. An equal amount. I divided with him whatever they paid me.

Q. Didn't each of you get $10 a day?

A. Yes, exactly.

Q. And how many weeks or months did you work on the Benavides Independent School District offices?

A. Only two weeks.

Q. Two weeks? You didn't work 30 days?

A. No, sir, only two weeks.

Q. What two weeks did you do that work?

A. I don't remember the dates.

Q. Was it in November?

A. It was during the hot days. I believe it was in summer . . .

Q. Summertime? When did you testify—

A. More or less.

Q. Did you testify as to when it was when you testified last November?

A. I don't remember if I did, and I don't remember it now.

Q. Didn't you testify last November at the former trial of this case that not only were you paid $200, but that you counted and saw the $850 that Mr. J. G. Garza kept from the check?

A. No, I did not.

Q. Mr. Garcia, who else besides Francisco—what did Francisco Carrillo get per day?

A. I don't know sir. I didn't ask him.

Q. Well, would not $10 per day be reasonable for him to have received if he were paid by Mr. Garza?

A. I don't think so, because he did just plain labor. He was no carpenter like we were.

Q. What would the normal rate of pay for him have been?

A. I have no idea, sir.

Q. Isn't it true, in addition to you and your son at $20 a day for the two of you, $10 each, there were two helpers at $6 a day and on helper at $8 a day?

A. I didn't know anything about the helpers, and I wouldn't know how much they made, if they were there.

Q. Who else do you know? What was Francisco Carrillo?

A. Carrillo is a first cousin of D. C. Chapa, and he was just laborer there.

Q. Do you make a distinction between laborer and helper?

A. Yes, sir, there is quite a distinction between a laborer and the one that has a trade.

Q. Then how many laborers were working on the roof at the same time you and your son were, if you know, besides you and your son?

A. There were the two men of Pedro Trevino, and Carrillo, and another man whose name I do not remember.

Q. Well, now, do you know what contract existed between J. G. Garza and Pedro Trevino?

A. No, I wouldn't know.

Q. Do you know whether or not the $720 was for materials?

A. No, sir, I didn't know nothing.

Q. Do you know whether or not the men who worked, that you say were from Pedro Trevino, were simply men recommended by Pedro Trevino for the purpose of applying tar, but hired by the Benavides Independent School District?

A. No, sir, I do not know anything about that.

Q. And do you know how much per day the two men that you say applied the tar got, what their pay was?

A. No, sir, I do not know.

Q. Then you do not know how much for labor was paid out of that portion over and above what you received?

A. No, sir, I do not.

Q. Well, do you now, from any source, know how much was paid Pedro Trevino for the materials used on that roof?

A. No, sir, I do not know.

Q. Where did you go from the time you got the check until you left J. G. Garza, whenever it was that you got it?

A. Mr. Garza went to the place where I was working, and he picked me up and he personally took me to the bank in Alice.

Q. Did Mr. Garza have the check with him?

A. When he arrived at the place where the work was done, he showed me the check and said, "Here, I have the check. Let's go and cash it."

Q. And did you go to any place other than Pedro Trevino's with him?

A. No, sir, no other place.

Q. Then if he paid the other four men besides you and your son that were paid out of whatever was left of the check after you were paid—

Mr. Bottler: That calls for a conclusion, Your Honor.

Mr. Foreman: I will rephrase it.

Were the other men paid before you were paid, or were you the first one paid?

A. I was the first one.

Q. And where were you paid?

A. In Alice.

Q. Was the check cashed at Alice?

A. In Alice.

Q. And from there, you went to San Diego to Pedro Trevino's lumberyard?

A. Yes, sir.

Q. And from there where did you go? Did you go anywhere else with Mr. J. G. Garza?

A. From there we went to Benavides.

Q. To where?

A. Benavides.

Q. And at Benavides, did you go to any place with him?

A. No, he left me in my house, and he continued.

Q. All of this occurred in one morning, one afternoon?

A. At noon.

Q. At noon?

A. At noon, in the middle of the day.

Q. And your best recollection was it was in what month of the year?

A. I don't remember, but you can see it on the stub.

Q. Now, with reference to the work on Mr. Carrillo's office, when and where did you have the conversation detailed—let me see, on this school district first. Have you testified to all the work you did at the Benavides Independent School Dstrict?

A. That was all, sir.

Q. Is that the only work you have ever done at the school plant for the Benavides Independent School District?

A. That was all.

Q. At any time. You never have done any other work?

A. Yes. Previously, many years ago, I did a little repair job, very small, just patching up work.

Q. Since 1950, have you done any other work except this work you detailed?

A. I don't think so. I don't remember.

Q. Who put the wood, the plywood, in the band hall?

A. I don't remember having done that work myself.

Q. Could you have done it and forgotten it?

A. I don't remember.

Q. Well, do you know whether you did it or not?

A. I don't remember. That is the best I can say.

Q. Did you do any work on the gym?

A. Yes, I did some work in the gym.

Q. When?

A. I don't remember, sir.

Q. Was it before or after 1950?

A. Much before.

Q. Before 1950?

A. Yes.

Mrs. Logan: He said much before.

Q. Much before. All right. Now, Mr. Garcia, when and where were you when you had the conversation with D. C. Chapa concerning the work he wanted you to do on the Benavides Independent School District—rather, on the office of O. P. Carrillo over the San Diego State Bank?

A. No,—on the main street in Benavides.

Q. Just tell us in your own words what his exact words were, D. C. Chapa, leaving out nothing, just what he said.

A. He told me, "I want you to do some repair work in my son's place, and start at once." That is the best I remember.

Q. That is all you remember his saying?

A. That is all, and also to order the materials and have them charged to the school.

Q. Now, when I asked you that same question last November, didn't you make the first answer, that is, "I want you to do some repair work on my son's office and start as soon as you can," and isn't that all you said he said?

A. I don't remember what I told you last year.

Q. But now you remember that something had happened long before last year, some five years ago?

A. Why do you make that statement to me? I am telling you the truth.

Q. Can you remember what D. C. Chapa said five years ago easier than you can remember what you said five months ago?

A. All I can say is that I don't remember what I told you last year. I have been telling the truth.

Q. Did you tell the truth last November?

A. Yes, sir.

Q. Did you, when I asked the question I just asked you a while ago, didn't you make the same answers you made here except you did not tell us about charging anything to the school?

Mr. Bottler: Your Honor, we submit that Mr. Foreman has asked this witness many questions—

Mr. Foreman: I have asked that question twice, and I will pass on. This is the second time I have asked it, and—well, there's no need to repeat it.

The Court: Very well. Are you near the end of your interrogation, Mr. Foreman?

Mr. Foreman: Judge, I never know until I get an answer. I may hang on something and talk longer, but I hope to—

The Court: I am goig to suggest at this time a recess of 20 minutes.

(Short recess.)

The Court: Be seated, please.

Q. (By Mr. Foreman) Mr. Garcia, would you be good enough to write your name as you normally write it some four or five times? Do you write Gabriel Garcia or only G. Garcia?

The Interpreter: I asked him if he needed glasses.

(Witness complies with counsel's request.)

Q. Thank you, sir. Now, with reference to the work that you did at the San Diego State Bank on the offices of O. P.

Carrillo, tell us when you started and when you stopped that work, to your best judgment.

A. I finished it in three weeks, but I cannot give you the dates because I do not remember.

Q. Did you work alone, or was your son with you?

A. With my son.

Q. He worked the same number of days that you did?

A. Yes, sir.

Q. You stated that you were paid in cash, or rather, you were paid by check by O. P. Carrillo for the work?

A. Yes, sir.

Q. How many checks?

A. He gave me three checks.

Q. Three checks?

A. Three checks.

Q. And how much were they for?

A. I remember having received the first check, and he always paid me with checks and if I worked three weeks, I know there was three checks. He gave me three checks.

Q. How much were they each?

A. The first check was for $100 and the others, I don't remember. It must have been the same amount.

Q. Would they be approximately $100 each?

A. I remember the first one was for $100, and I just presumed the others to be $100, but I don't remember.

Q. And how were they signed?

A. He give the checks to me, and I believe he just signed O. P. Carrillo.

Q. Do you know or do you recall how they were signed, or is it your testimony you do not recall?

A. Really I do not remember. I am just guessing.

Q. But you do know there were three checks?

A. Yes.

Q. Would you recognize those three checks?

A. (Examining documents tendered by counsel.) I see one is for $180 and I see another one is $10 and the other is $10—for $100.

Q. My question is were those three checks marked here Government's Exhibits 4-A, 4-B and 4-C—I beg your pardon, Defendants' Exhibit 4-A, 4-B and 4-C, checks given you by O. P. Carrillo for labor done on his office?

A. Yes, sir.

Q. Did you tell us last November that you never saw this check, Government's Exhibit 4-A for $180?

The Court: You mean Defendants' Exhibit 4-A?

Q. Defendants' Exhibit 4-A for $180 that you denied ever having seen that check?

A. Probably I did not remember, but I already told you he paid me for the three weeks' work approximately $100 a week.

Q. Mr. Garcia, I am only asking you that question with reference to your sworn statement or testimony in November, and not with reference to what the checks are.

A. I don't even remember of having been shown this to me.

Q. Well, would you say that you had never seen any check and you had never been given any check signed jointly D. C. Chapa and O. P. Carrillo?

A. If I denied having seen the signature of these two men, it is because I didn't pay any attention. I knew the check was good and that was all. I didn't know who signed it.

Q. Did you ever at any time in November from the time you took the stand until you left retract your denial you had ever received a $180 check from O. P. Carrillo?

A. I didn't remember the amount of the checks. That was all that I didn't want to retract.

Q. Was the check Defendants' Exhibit 4-A dated August 30th, 1952, for a hundred and eighty dollars signed D. C. Chapa and O. P. Carrillo presented to you by me while you were on the witness stand?

A. If I did, it is because I couldn't remember, but I told you that they have paid me.

Q. As to why you did or why you didn't, I am not inquiring. My question is, was it presented?

A. If you say so, you must have presented it. I don't deny it.

Q. I am not asking you did you deny it. I am asking do you recall it.

A. I remember you showed me some checks, but I could not swear to the amount.

Q. And you cannot swear that you denied throughout your testimony ever having received any except the $10 and the $100 checks.

A. I don't remember if I did.

Q. All right.

Mr. Foreman: We offer Defendants' Exhibits 4-A—4-A, 4-B and 4-C.

The Court: They are admitted in evidence.

The Interpreter: May I say what he is telling me?

Mr. Foreman: No, ma'am, unless it is part of his answer.

The Interpreter: I believe so, because he says, "I have repeatedly told you and the Government that I was paid for the three weeks' work, and I didn't remember the amount of the check."

Q. Are each of these your signatures? That is your endorsement?

A. Yes, sir, that is my endorsement.

Q. One of them appears to have been cashed at the Piggly Wiggly store.

A. I don't remember I cashed it there.

Mr. Foreman: May I pass them to the jury, Your Honor?

The Court: Yes, sir.

Q. By the way, are you a member of the Freedom Party, Mr. Garcia?

A. I don't belong to any party.

Q. Was your son the Freedom Party nominee for postmaster?

Mr. Bottler: I don't believe nominees or candidates run for postmaster.

Mr. Foreman: I mean—I didn't mean as a candidate at the polls.

Was your son sponsored by the Freedom Party as the postmaster to succeed the Old Party postmaster?

A. Not to my knowledge, sir. I don't know.

Mr. Foreman: That is all.

Mr. Bottler: That is all.

The Court: Very well. You may step down.

Mr. Foreman: In addition to—excuse me, but I would like to, unless the Government will stipulate, establish those

three checks appear charged to the D. C. Chapa account. I would like to establish it by Mr. Lopez.

The Court: Do you want to recall Mr. Lopez?

Mr. Foreman: I don't care to do it if you will agree they appear on that 76.

Mr. Bottler: If you will show me where they do, I will stipulate it.

Mr. Foreman: It will take me longer to find it than it will take to put Lopez on.

Mr. Bottler: Very well. We will stipulate these checks were paid by D. C. Chapa and O. P. Carrillo.

The Court: Which checks?

Mr. Bottler: The three checks Mr. Foreman was asking about, Defendants' Exhibit A, B, and C.

The Court: Very well. Will you dictate your stipulation, please?

Mr. Foreman: It is agreed by and between counsel for the prosecution and counsel for the defense that Defendants' Exhibit 4-A, B and C were checks written on and charged to the accounts of D. C. Chapa and were for—that is his personal account, and were for labor performed and show the labor performed on the offices of O. P. Carrillo in the San Diego State Bank in the fall, September or October of 1952.

Mr. Bottler: By—

Mr. Foreman: Gabriel Garcia and his son, whatever that Garcia is.

The Court: I thought that the check was of O. P. Carrillo?

Mr. Foreman: Those were, but they were all charged to D. C. Chapa's account. He was just out of law school, Your Honor.

The Court: Very well. So stipulated. Will you now need to recall Mr. Lopez?

Mr. Foreman: No, Your Honor.

6-1442 ROSA PEREZ,

a witness called in behalf of the Government herein, having been first duly sworn on oath, testified as follows, to-wit:

6-1442 DIRECT EXAMINATION

Q. (By Mr. Bottler) What is your name, ma'am?
A. My name is Rosa Perez.
Q. Where do you live?
A. San Diego, Texas.
Q. How long have you lived in San Diego?
A. For the past thirty years.
Q. And by whom are you employed?
A. By the San Diego Lumber & Hardware Company.
Q. Who owns the San Diego Lumber & Hardware Company?

A. Mr. Jose Tovar, Mrs. V. P. Tovar and Mrs. Leonares Tovar.

Q. Are you related to those people?

A. Yes, sir.

Q. What is your relationship?

A. I am first cousin and foster sister of Jose Tovar and niece and foster daughter of Mrs. V. P. Tovar, and foster sister-in-law of Mrs. Leonares Tovar.

Q. What is your position in the San Diego Lumber & Hardware Company?

A. I am bookkeeper.

Q. Were you bookkeeper in the year 1952?

A. Yes, sir.

Q. Are there any other bookkeepers there?

A. No, sir, I was the only bookkeeper.

Q. Who kept all the books and records of the San Diego Lumber & Hardware Company in the year 1952?

A. I did, sir.

Q. Did you keep your records correctly?

A. To the best of my ability.

Q. Did you keep them currently?

A. Yes, sir.

Q. Was it the regular course of your business to keep records of sales, receipts, duplicate deposit slips, as a part of the regular course of your business to keep those records?

A. Yes, sir.

Q. I will hand you Government's Exhibit 101, what has been identified as such, and ask if you can identify it?

A. Yes, sir. This is a booklet that contains our sales for August of 1952, both our credit and our cash sales for the month of August.

Q. I will show you what has been identified as Government's Exhibit 102 and ask you if you can identify that?

A. This also is a booklet which contains the credit and cash sales of the San Diego Lumber & Hardware Company for September of 1952.

Q. I will hand you what has been marked for identification as Government's Exhibit 104 and ask you if you can identify this?

A. Yes, sir, this is a ledger sheet of the account of the Benavides Independent School District.

Q. And what dates does it cover?

A. It covers the dates from August 2, 1952 to November 7, 1952.

Q. And what does the first entry showing the old balance, what was that amount?

A. $5.50.

Q. And what does the ledger show as the last entry?

A. The last entry was a receipt for $582.81, and that closed the account.

Q. Do you have with you—

Mr. Foreman: $582.80?

Mr. Bottler: $582.81.

Do you have with you a summary of the items represented by the ledger sheet, Government's Exhibit 104?

A. Yes, sir, I do.

Q. Could I see it please?

A. (Witness tenders document to counsel.)

Mr. Bottler: Mark this for identification as Government's Exhibit 218-A and 218-B.

(Documents tendered to the Clerk and marked Government's Exhibit 218-A and 218-B.)

Q. Turning your attention to what has been marked for identification as Government's Exhibit 218-A, I will ask you to state what this is, without saying what any of the figures marked in there are at this time?

A. This is a summary of the invoice numbers, the dates and the names of the persons that took the merchandise and the amount of the invoices for the Benavides Independent School District from August until November.

Q. All right. Now, were those items checked by you against your books and records, identified as Government's Exhibits 102 and 101, and against the Benavides Independent School District ledger to see whether the information reflected on there covers the items which were shown by your records could have been sold to the Benavides Independent School District account during the period of time covered by Government's Exhibit 104?

A. Yes, sir. I would like to make a correction of what I said a while ago. I said this was a summary from August until November, and it is really from August until September, 1952.

Q. Turning your attention to Government's Exhibit 218-B I will ask you if you can identify what it is?

A. This is a sum total of all the items of each invoice as shown in this summary.

Q. And did you run this yourself?

A. Yes, sir, I did.

Q. All right. Now, taking Government's Exhibit 101, do you find in there the invoice number 9514?

A. Yes, sir.

Q. And what does it show the date to be?

A. August 21, 1952.

Q. And what name is shown as receiving the merchandise?

A. The Benavides Independent School District.

Mr. Foreman: Are you planning to go through each one of these?

Mr. Bottler: No, I am just going over one to identify what this is. I am trying to save time, rather than going through each one.

Who is the person shown as signing for it?

A. G. Garcia.

Q. What is the amount of that purchase?

A. $129.45.

Mr. Bottler: The Government offers into evidence Government's Exhibits 218-A and 218-B.

Mr. Foreman: May it please the Court, as to the summaries, in order to save going through each of the items, we have no objection at all. It would normally be hearsay prepared out of the presence and hearing, and so forth, however, I do think it ought to be limited to Defendant O. P. Carrillo and on behalf of the other defendants, we object.

The Court: What says the Government?

Mr. Bottler: It is offered as against all defendants on all counts with which they are charged and triable, as one of the circumstances setting up and demonstrating the scheme and artifice to defraud

The Court: They will be admitted as to all defendants, and Government's Exhibits 218-A and B are admitted.

Q. (By Mr. Bottler) Now, I will ask you, does this summary include the old balance with which the Benavides Independent School District started out on August 2, 1952?

A. No, sir.

Q. What is the total of the purchases as shown on Government's Exhibit 218-A?

A. $577.31.

Q. And if you add $5.50, the old balance, to this $577.31, what is the total?

A. $582.81.

Q. Now, I will ask you if you can identify Government's Exhibit 105?

A. This is the receipt book that belongs to the San Diego Lumber & Hardware Company.

Q. And what is receipt No. 3889, if you can identify it?

A. This is a receipt made out to the Benavides Independent School District on November 7th, 1952.

Q. Who made out this receipt?

A. I did.

Q. And what was given to you at the time that you made up the receipt?

A. A check, sir.

Q. And what was the amount of the check?

A. $582.81.

Q. I will hand you Government's Exhibit 103 and ask you if you can identify that?

A. Yes, sir, this is a deposit slip for the San Diego Lumber & Hardware Company.

Q. Is there an item on there of $582.81?

A. Yes, sir, there is.

Q. What is shown under the item "Checks as follows"?

A. It shows a check from the Texas State Bank.

Q. All right. Now, was it your practice to put the name of the bank on which the check was drawn if it was out of town, or was it your practice to put the name of the maker of the check?

A. The name of the bank when it was out of town.

Q. In other words, you did indicate on what bank the check for $582.81 was drawn?

A. That is right.

Q. Now, what is the date shown on the ledger sheet showing the payment of $582.81?

A. November 7, 1952.

Q. What is the date of your receipt?

A. November 7, 1952.

Q. What is the date of your deposit slip?

A. November 7, 1952.

Mr. Bottler: Your Honor, the Government offers into evidence Government's Exhibits 103, 104, and 105, being respectively the duplicate deposit slips, the ledger of the Benavides Independent School District account, and the receipt dated November 7, 1952.

Mr. Foreman: I would like to discuss one of these exhibits, perhaps two of them, with prosecution attorney out of the hearing of the jury and in the hearing of the Court at the Bench.

The Court: Very well, sir.

(The followings proceedings were held at the Bench out of the presence and hearing of the jury.)

Mr. Foreman: Is this the only thing you are offering in this 105?

Mr. Bottler: At this time.

Mr. Foreman: You see here, Your Honor, it has several other things in there and I think it should be limited to this, and furthermore if this is an effort to black-out, it is unsuccessful. I don't know if there is anything prejudicial there or not, and evidently there is and they haven't effectively blacked it out.

The Court: I think your question is as to Exhibit 105, which is only receipt 3889?

Mr. Bottler: That is correct, Your Honor.

Mr. Foreman: Then we think it should be photostated or detached.

Mr. Wilkey: Your Honor, I think it is pertinent to have it in the book because it is a receipt and they are consecutive in being kept in the regular order of business and can show what is before or after.

The Court: It could be photostated.

Mr. Foreman: That part should be. We think nothing should be admitted but that.

The Court: Do you have any objection to 105, being only receipt No: 3889?

Mr. Foreman: I have no objection to a typewritten copy being made or a photostat.

The Court: Exhibit 105 is admitted in evidence, and it will include only receipt No. 3889, and so as to isolate it, I suggest it be photostated.

Mr. Bottler: I guess we can show from the testimony this is in the regular sequence of the book?

The Court: I will make an explanation that it comes from a book of receipts, but they are to see only 3889 and the Court is having it photostated.

Mr. Bottler: We don't feel it should be emphasized that they can't see the other receipts. We have nothing to hide. We introduce only that one.

The Court: You are objecting to the other receipts, aren't you?

Mr. Foreman: Yes, we are. While we were examining the other receipts last time, they tried to prove D. C. Chapa bought something for some woman he wasn't married to.

The Court: We won't go into anything that came out last time.

Mr. Foreman: It might appear there in that halfway covered up stuff there. I am not objecting—I think it is proper what Court is ruling.

The Court: Now, as to 103 and 104.

Mr. Foreman: I don't think there is any objection to them, Your Honor.

The Court: They will be admitted, 103 and 104.

Mr. Foreman: We ask that they be limited to D. C. Chapa and O. P. Carrillo, as we have heretofore.

Mr. Bottler: We offer them as records kept in the course of business, to be received generally, and not limited as to all defendants and all counts.

Mr. Wilkey: While they are being talked about and before they are photostated, could that 105 be passed to the jury today so they can see the original for once, and later on the photostat substituted?

The Court: We can photostat it quickly.

Mr. Bottler: They wouldn't have time to search through the book.

The Court: Well, if there is an objection—

Mr. Foreman: I do object. We could have it photostated before he gets off direct examination.

Mr. Bottler: In order that I may understand the Court's

ruling, may I interrogate this witness as to whether or not this receipt is contained in her regular book of receipts and this is in the regular numerical sequence?

Mr. Foreman: We will stipulate that.

The Court: You may, but I don't want you to pass the book around to the jury.

Mr. Bottler: I would also like to say, we did not mask that. It was the clerk of Judge Hannay's court that attached the sheet.

The Court: I want to make an announcement about the exhibits before I turn loose of them.

(The following proceedings were had in the presence and hearing of the jury.)

The Court: Government's Exhibit 103 and 104 are admitted in evidence. Also Government's Exhibit 105 is admitted in evidence, and I will explain to the jury that Exhibit 105 is a receipt of San Diego—a carbon copy of San Diego Lumber & Hardware Company No. 3889. It appears here in a book of receipts in which there are a number of receipts. It has been suggested that only receipt 3889 be admitted in evidence, and only receipt 3889 is admitted in evidence, and is here identified as Government's Exhibit 105. In order to isolate it from the other receipts which should not be exhibited to the jury, the Court has ordered that Government's Exhibit 105, which is receipt 3889, be photostated, and it is ordered that the entire book of receipts not be handed

to the jury. If you want to interrogate the witness further about the receipt, you may, Mr. Bottler.

Mr. Bottler: Thank you, Your Honor.

This receipt of the Benavides Independent School District, No. 3889, does it appear in your book in the regular numerical sequence of receipts?

A. Yes.

Q. When was this made out?

A. November 7, 1952.

Q. And who made it out?

A. I did, sir.

Q. On that date?

A. On that date.

The Court: Now, Mr. Anderson, can that be photostated promptly?

The Clerk: We can't do it on our machine. We will have to take it out.

The Court: Very well. I suggest it be done tomorrow then.

The Clerk: I can do it in the morning.

The Court: Very well.

Q. (By Mr. Bottler) Miss Perez, have you checked through the books and records of the San Diego Lumber & Hardware Company to ascertain whether the San Diego Lumber & Hardware Company received any other payment for the invoices shown on Government's Exhibit 104, that is the ledger for the Benavides Independent

School District, apart from that check from the Benavides Independent School District.

A. I have checked my records and I have found that that is the only receipt I have.

Mr. Foreman: May it please the Court, you are speaking now only what the records reveal. You are not asking if they received any?

Mr. Bottler: I am asking what the records reveal, that is correct.

Did you receive any other check payments or cash in payment of these invoices as charged to the Benavides Independent School District as shown in Government's Exhibit 104, the ledger sheet?

A. Only that one check.

Q. And by that one check, what do you mean?

A. The check for $582.81.

Q. Now, do you know where the lumber and other materials represented by these sales slips and the ledger sheet were delivered?

A. Yes, sir.

Mr. Foreman: Wait a minute. That is bound to be hearsay, Your Honor. This young lady, unless she delivered them herself—the lumberyard is at a different place from the San Diego State Bank, and we object to anything she may have ascertained or may have been told, or anything that may have been represented to her by anyone else.

Mr. Bottler: Your Honor, may we demonstrate the source of her knowledge?

The Court: Yes, you may.

Q. (By Mr. Bottler) Where is the San Diego Lumber & Hardware Company located with reference to the bank building, the old bank building of San Diego?

A. It is about a block away, sir.

Q. All right. Now, where did O. P. Carrillo have his office, his law office, in 1952 at the time that these materials were being delivered?

A. On the 2nd floor of the San Diego State Bank.

Q. State whether or not from the San Diego Lumber & Hardware Company, you can see the bank building in the second story?

A. Yes, sir, you can see the building.

Q. How did you know where those materials were delivered?

A. I saw the truck deliver the materials once or twice.

Q. All right. To where were the materials delivered?

A. To the office of O. P. Carrillo.

Q. All right. I will hand you what has been marked for identification as Government's Exhibit 6 and ask you—Defendants' Exhibit 6, excuse me, and ask you whether or not you have seen this check purportedly showing it to have been paid to the San Diego Lumber & Hardware Company for $623.53?

A. I saw this check last November.

Q. Had you seen it before last November?

A. As far as I remember, I had not seen this.

Q. Now, if this—if you had seen this check in 1952 and had entered it for the San Diego Lumber & Hardware Company, would your records reflect that transaction?

A. Yes, sir.

Q. All right. I will ask you whether you have brought

with you any deposit slip, duplicate deposit slips, for the period November 4 to November 14?

Mr. Foreman: Your Honor, we can save time on that. It is not the defense's theory that this young lady was given that check or that she deposited that check. It is our theory Jose Tovar cashed that check and put the money in his pocket, and therefore the books, it wouldn't matter what they showed.

Mr. Bottler: We object to the argument of counsel and ask that the jury be instructed not to consider it, and ask permission to go forward with our testimony and develop it.

The Court: Very well, and I will instruct the jury any argument of counsel or questions asked, you will disregard the argument of counsel and regard only the sworn answer of the witness.

Q. (By Mr. Bottler) Do you have those duplicate deposit slips with you?

Mr. Foreman: We only interposed that to save going through all the deposit slips these people deposited during that month. We have no motive at all except to save time. We are not assuming and we know and he knows we are not contending that the money went in, and therefore those questions are useless and as she has got 40 or 50 deposit slips, it is a useless waste of time.

The Court: I don't know what the evidence is until he reveals it, and the jury will not either. Counsel for each side know more about the case than the jury or the Court.

and that way you may be able to anticipate. I don't know what the testimony is going to reveal. My ruling is simply that the Government may proceed with its case. I will allow each side to present their own case in the manner in which they see fit within the rules of evidence.

Q. (By Mr. Bottler) Do you have your duplicate deposit slips with you for the period November 4 to November 14?

A. Yes, sir, I do.

Q. May I see them, please?

A. I have all of that month there.

Mr. Bottler. Would the Clerk mark this as Government's Exhibit 219?

(Documents tendered to the clerk and marked Government's Exhibit 219.)

Q. (By Mr. Bottler) I will ask you whether or not Government's Exhibit 219 contains any deposit in the sum of $623.53?

A. No, it doesn't. I have already checked them, but I will go through them again.

Q. If you have already checked them, that is sufficient. Now, did you run a tape on cash receipt for each day, or did you make any other record of moneys that came in?

A. Yes, sir, I do.

Q. Do you have those records with you for the 4th of November?

A. Yes, sir. This is my record for the 4th of November.

Q. What is—just a second.

Will you mark this Government's Exhibit 220, please?

(Document tendered to the Clerk and marked as Government's Exhibit 220.)

I will hand you Government's Exhibit 220, and ask you what this is? It is all one exhibit.

A. It is the register tape for our cash sales of November 4, 1952, and the register tape for our credit sales of November 4, 1952.

Q. Now, which is the brown tape?

A. The brown tape is for our cash sales and the white tape is for our credit sales.

Q. Do you have a similar tape for November 14?

A. Yes, sir, I do.

(Document tendered to the Clerk and marked Government's Exhibit 221.)

Q. I will hand you government's Exhibit 221, and ask you to identify this?

A. This is also the register tape for cash sales of November 14, 1952, and the register tape slip for November 14, 1952, for our credit sales.

Q. Does this show the receipts of the San Diego Lumber & Hardware Company for these two days, November 14 and November 4, 1952?

A. Yes, sir.

Mr. Bottler: The Government offers into evidence Government's Exhibit 219, 220 and 221.

Mr. Foreman: Are these deposit slips of this company in that bank? Is that what it is?

Mr. Bottler: Yes.

Mr. Foreman: May it please the Court, we object to them as unnecessarily encumbering the record. The offering of them is based on a presumption that is not established, the presumption that is the only way Jose Tovar could get money off a check would be to send it to her, and it is not in the record that that is true. All this is is some system of bookkeeping of a company not named in this indictment, in which none of these defendants are privy as to what they did or didn't do, and therefore it is immaterial and irrelevant, and the theory or presumption upon which it is offered is prejudicial.

The Court: May I see the exhibits, please?

Mr. Foreman: Also it is hearsay as to these defendants, as to the operations of Jose Tovar or his bookkeeping. All it tends to show is something is not there, and it gets back to the theory of the bear, and I will show you the tree where it was killed if you don't believe me. Because this doesn't show it there, he wants to leave the inference something didn't happen, and since it isn't in their records, and they are not privy to it, any transaction of that kind would be hearsay as to all of these defendants.

Mr. Bottler: Your Honor, these are offered as records of the San Diego Lumber & Hardware Company regularly kept in the course of business by the witness on the stand. They show from the records of the company what came into the San Diego Lumber & Hardware Company, the receipts, and what was deposited. We offer them to show

that the records show no payment of $623-and-some-odd-cents, and we suggest that Mr. Foreman's objection would only go to the weight and not to the admissibility of this evidence. If we didn't introduce something like this—

The Court: I will admit them for what they do show, and the jury is instructed they are not evidence of anything they do not show. Government's Exhibits 219, 220 and 221 are admitted.

Q. All right. Mrs. Perez, I will show you what has been marked for identification as Defendants' Exhibit 6 and refer you to the reverse thereof, and ask you if you can tell what the purple endorsement of the San Diego Lumber & Hardware Company is?

A. That is a rubber stamp endorsement of the San Diego Lumber & Hardware Company.

Q. Now, can you identify the initial J which appears on the back of it, or not?

A. It is a J, but that is all that I can say.

Q. Can you tell whether or not this was made by Jose Tovar, or anyone else?

A. I cannot say whether that is made by Jose Tovar or not.

Q. I will ask you, where was the rubber stamp which made this impression, this type of impression, kept in the years, say, 1954?

A. On the edge of the cash register, the credit cash register in my office.

Q. I will ask you, where is your office in the San Diego Lumber & Hardware Company?

A. I don't quite understand your question.

Q. Where is it with relation to the room in which merchandise is displayed?

A. It is on the rear end of the building.

Q. On the side towards the bank building, or away?

A. Yes, towards the bank building.

Q. All right. Now, do you have a door on that office?

A. Yes, sir.

Q. Was it customarily kept open or closed during the years 1954 and 1955?

A. That door is kept open most of the year except in wintertime. I keep it closed then to keep the room warm.

Q. And is that room or office open to people who are in the main room of the San Diego Lumber & Hardware Company?

A. Yes, sir.

Q. Where, in relationship to the door, is the cash register on which this stamp was kept?

A. It is practically right at the entrance, sir.

Q. All right. I will hand you what has been marked for identification as Government's Exhibit 169, and ask you if you can identify it?

A. This is a ledger sheet made out to the Benavides Independent School District.

Q. All right, and what period of time does that cover?

A. That is an invoice that was taken out on November 13, 1952 and was paid on March 12, 1953.

Q. All right. What is the amount of that invoice?

A. The amount of the invoice is $28.15.

Q. What is the number of the invoice?

A. 2540.

Q. What was the amount of payment received on March 12, 1953?

A. $75.

Q. Does the Benavides Independent School District now have a debit or credit balance?

A. A credit balance of $46.85.

Q. I will hand you what has been marked for identification as Defendant's Exhibit 9, and ask you whether you can identify that?

A. This also is a sales book of the San Diego Lumber & Hardware Comppany which contains both credit and cash sales for the month of November, 1952.

Q. Would you look in it and see if you can find invoice 2540?

A. Yes, sir.

Q. And what does that invoice show?

A. It shows that on November 12, 1952 an invoice was issued to the Benavides Independent School District for one heater and one heater hose, and the sum of both items was $28.15.

Mr. Foreman: $28.50?

Mr. Bottler: $28.15.

Would you add $582.81 to $28.15, please? What is the total figure?

A. $610.96.

Mr. Bottler: All right. The Government offers in evidence Government's Exhibit 169 of the Benavides Independent School District, the San Diego Lumber & Hardware Company.

Mr. Foreman: We have no objection, Your Honor.

The Court: Government's Exhibit 169 is admitted in evidence.

Mr. Bottler: May I have one moment?

The Court: Yes.

(Short interval.)

Q. (By Mr. Bottler) Do you keep a record of all cash sales?

A. Yes, sir.

Q. In which books do you keep those records?

A. In those same booklets I introduced a while ago.

Q. That you identified?

A. That I identified.

Q. And how do you tell a cash transaction from a credit transaction?

A. The invoices for credit sales are enumerated, and the others are the same, from the same thing except they are not numbered.

Q. Do your books of cash sales reflect the receipt of $623-and-some-odd-cents from Mr. D. C. Chapa or Mr. O. P. Carrillo in the period November 4 to November 14?

A. No, sir, they don't. Our cash sales wouldn't tell us who paid what amount.

Q. Well, is there any cash slip in there for that amount, $623-and-some-odd-cents?

A. No, sir.

Mr. Bottler: No further questions.

The Court: Mr. Foreman, it is now a quarter to five. If it can at all be done, I would like to conclude this witness this afternoon.

Mr. Foreman: Judge, I would like to also, but it will be

longer than—I was hoping to get through as much as I can, but I am going to want a diagram of that store and she could be preparing that between sessions. I will do my best, but I can't get through with her by five o'clock.

The Court: Do you think you can finish by 5:15?

Mr. Foreman: I don't know. I consider in view of the inferences and what I consider extraneous evidence I have got—if it were on the issues I consider material, but yes, but I have got to oppose these theories and suppositions and inferences of the prosecution.

The Court: I suggest it be tried.

Mr. Foreman: All right.

6-1468 CROSS EXAMINATION

Q. (By Mr. Foreman) Little lady, tell us whether or not you had a rubber stamp at the San Diego Building & Lumber Company, if that is a facsimile and reproduction of a stamp you had?

A. It is very similar to our rubber stamp.

Q. Tell us whether or not that J is the first one you ever saw, or if you saw them on a great number of checks?

A. It is not the first time I have seen a J.

Q. As a matter of fact, each time Jose, your foster brother and actual blood cousin, handles a check, to identify he handles it from you, there is a J on it?

A. Not necessarily a J.

Q. Does he sometimes write J. T. or Tovar?

A. J. T. Jose Tovar.

Q. Does he, in a great many instances, write only a J?

A. I believe he has.

Q. Tell us whether in your best judgment that is the way he makes a J?

A. I can't tell the jury this is the way he makes a J or not.

Q. I can't ask you to be positive, but does that appear to represent the J he makes?

A. I don't know.

Q. Do you have any of his other checks that you had at the last trial for comparison? Do you have any similar checks returned of which you had custody?

A. I had some checks last time, but I don't have them now.

Q. Was there any difference in the J on those checks and the J you have now?

A. Different checks have different forms of I.

Q. I am speaking only of the J.

A. Just the J, sir.

Q. Did you not identify that as a similiar J to all the other J's on the other checks Jose Tovar took to the bank and cashed?

A. This particular J?

Q. Yes. Did you compare that with the J on the other checks?

A. No, sir.

Q. Did you have any checks here in Houston, either Benavides Independent School District, or anybody's checks?

A. No, sir.

Q. Were there such checks?

A. In San Diego.

Q. Would you be willing to produce your bank statement for the month of November, 1952, with such checks —we will say the year 1952, your returned checks, all of them, so we may go through and compare this J with those?

A. Yes, sir, if I get permission to go home.

The Court: You will have permission to go home.

Q. Now, Miss—

The Court: Have I understood you requested she bring with her things that are now in San Diego?

Mr. Foreman: Yes, Your Honor, which were here before and I thought were in evidence for comparison.

The Court: If that is to be done, I think we can adjourn this trial until Monday morning.

Mr. Foreman: May it please the Court, I would like, if permitted to do so, to ask her two or three other questions but I won't run over five minutes. I am not trying to argue with the Court.

The Court: I want to say to the jury, despite the announcement I made earlier we would devote five full days to this case this week, we are going to adjourn the trial this afternoon until Monday.

Mr. Foreman: Thank you, Your Honor.

Miss Perez, isn't it true that Jose Tovar frequently took large checks to the bank and cashed them, without giving them to you to deposit?

A. Yes, sir.

Q. Would there be anything unusual in his practice and custom as it prevailed in 1952 for him to have taken this check to the bank, cashed it, put the money in his pocket and not give it to you to deposit?

A. Will you please restate that?

Q. Was it your practice that it was usual or customary for him, would there have been anything unusual, first, for him to take a check for $623.53 to the bank, depositing it, and coming back without it ever being handled through you so as to appear on the books or on the deposit slip?

A. It is very unusual he wouldn't give me the money back if he would have received it.

Q. All you are undertaking to say with reference to the deposit slips is that this was not given to you to be credited to any account or thereby deposited, isn't that true?

A. Yes.

Q. You do not know whether Jose Tovar went to the bank and cashed it and put it in his pocket or not?

A. No, I do not, but—

Q. But you do know—

Mr. Bottler: I don't think she had finished.

Mr. Foreman: I am sorry I interrupted.

A. That I know that whatever belonged—that was made to San Diego Lumber & Hardware Company, and if it was San Diego Lumber & Hardware Company money, he would have brought it back

Q. How do you know that?

A. I know that.

Q. You know he is an honest man?

A. If it was San Diego Lumber money, he would have brought it back to me.

Q. Did he pay income tax on the books you keep, or the books he kept, or what?

A. He paid income tax on whatever he had to pay income tax on.

Q. Weren't they made up from your books?

A. Yes.

Q. And didn't the Government assess $12,000 to him for insufficiency, an assessment for money he had not paid on?

A. The Government billed him for money like that, yes.

The Court: As stated a few minutes ago, we will adjourn the trial until Monday morning and the jury will be excused until Monday morning at ten o'clock. Before the jury is excused, I want to instruct you again as I have instructed you before, you will not discuss this case with anyone, you will not permit anyone to discuss it with you. If anyone attempts to discuss the case with you, you should attempt to ascertain who it is and report it to the Court, but even though you are unable to ascertain who it is, you should nevertheless report it to the Court. You are again instructed although you have heard some but not all of the evidence, you should not reach any conclusion regarding the case and you should not discuss the case with each other. Early in the week, some of the gentlemen of the jury advised me that they—I am mentioning this as an illustration—that some of them

lived in Pasadena and asked if it would be permissible to travel back and forth together, and I told them it would be, but they should not discuss the case. There is nothing wrong with members of the jury associating with each other, because you are in rather close association, but your instructions are that you should not discuss the case with each other and not reach any conclusion until the case in concluded, until you have heard all of the evidence and the argument of counsel and the charge of the Court.

You are again instructed you should avoid reading about this case in the newspapers or listening to it on the radio and television. If you should inadvertently hear something about it, you should put that out of your mind and base your ultimate decision that you may be called on to make upon the competent evidence you hear in this courtroom.

With those instructions, the jury is excused until ten o'clock Monday morning.

I will ask counsel to remain.

(The following proceedings were heard out of the presence and hearing of the jury.)

The Court: Will the record indicate that the jury has withdrawn.

Mr. Bottler, I believe the witness Rosa Perez identified Government's Exhibits 101 and 102. Do you offer them?

Mr. Bottler: No, Your Honor, I do not offer them,

sir, in order to save encumbering the record. That is the purpose for which we had the summaries.

The Court: My notes did not indicate they were admitted, and I was wondering if you had offered them.

Getting back to the motion for mistrial, it has been indicated that counsel will prepare briefs and will have them ready tomorrow afternoon. As I announced this morning, I believe it was this morning I made the announcement, I will attend a funeral tomorrow afternoon at four o'clock in Pasadena, so I am going to suggest that counsel file your briefs with the Clerk, Mr. Anderson, tomorrow afternoon before 4:30. The Clerk's office closes at 4:30, and the bailiff, Mr. Gerrard, is also my neighbor, and Mr. Anderson, will you give them to Mr. Gerrard and Mr. Gerrard, will you leave them at my home tomorrow afternoon as you go home because I do want to study them over the week end, so I will ask counsel to have your briefs in the hands of Mr. Anderson before 4:30 tomorrow afternoon.

The Clerk advises me that—concerning Government's Exhibit 105 which is to be isolated from the other receipts in that book, that it should be photostated and the Clerk advises they cannot photostat that on their machine by itself. I do not know why, but maybe he does and he has handed up a note, "who is to pay for the photostat copy of Government's Exhibit 105?" I am willing for anyone to pay for it so long as I don't have to.

Mr. Foreman: I nominate Mr. Wilkey, Your Honor.

Mr. Wilkey: Your Honor, it is by the defendant's suggestion that the book itself, which is of course the best evidence offered by the Government, be—

Mr. Foreman: I will pay for it, Your Honor.

The Court: Well, if it is going to be a burden on anyone, I think a typed copy can be made and substituted, but in any event I want some kind of copy of Government's Exhibit 105 made and place in evidence in lieu of it.

Mr. Foreman: I have a charge account at Ridgeway's, which is the nearest photostating shop. I wonder if we couldn't make one of the prosecutors take it over there?

Mr. Wilkey: We will be glad to volunteer most any service not involving money, Your Honor.

The Court: Anything further, gentlemen?

Mr. Bottler: Yes, there is. Speaking of expenditures, the defendant requested the witness Rosa Perez to return to San Diego and to pick up some checks there for November 1952 of the San Diego Lumber & Hardware Company, and I am sure the question will rise as to who is to pay for her transportation down and back.

The Court: She is still on the witness stand. Normally wouldn't she probably go home over this long week end between now and Monday morning?

Mr. Bottler: As I understand the rules on payment with the marshal's office, she can go home all right.

The Court: So long as it doesn't take any more than the time if they stayed here. If she lived in Pasadena

or Baytown, they would let her go home but if it is a great distance such as San Diego, it isn't allowable.

Mr. Foreman: May it please the Court, I am only asking she present these records. If she goes, I am sure she will bring the records.

The Court: Speaking not judicially, if I know anything about human nature, I am sure she will go home.

Mr. Bottler: May we have the defense specify what bank statements or checks it is he wants?

Mr. Foreman: I asked for all bank statements of the year 1952, which she had before and brought on a similar request.

The Court: We are getting into a question of conflicts of mileage or per diem, which is greater. These matters are matters for determination of—what do you call that officer?

Mr. Bottler: The comptroller general.

The Court: The Comptroller General of the United States. It is a higher authority. It is not for judicial determination.

Mr. Foreman: May it please the Court, are the defendants required to be here for whatever the verbal gymnastics—one of us will be here tomorrow, but for filing of the brief—

The Court: No one is required, but filing of the briefs with Mr. Anderson before 4:30.

Mr. Foreman: Your Honor, one of the defendants' counsel has cases set for trial next week, and there seems to be friction about continuance. I have prepared a motion for continuance and a certificate for the Judge to sign stating he is in trial here.

The Court: He certainly is.

Mr. Foreman: And the proceedings will probably continue beyond May 28, 1957. He is afraid unless he gets there tomorrow—

The Court: It will probably continue beyond that date. I will make such a certificate. I am not committing myself how I will rule on any motion that may come before me in this Court, though.

Mr. Foreman: This was for Monday, and he wonders if we could get this certified. Usually we get a letter and attach it as an exhibit.

The Court: All right. I will sign each one of them.

Anything further, gentlemen?

Mr. Bottler: Nothing from the Government.

Mr. Foreman: Nothing from us, Your Honor.

(The following proceedings were held out of the presence and hearing of the jury.)

The Court: Be seated, please. I am ready to rule on the motion for mistrial.

Mr. Foreman: May it please the Court, before the Court rules, I feel it is our duty, or we do, the three lawyers representing the defendants, that it is our duty to call to the Court's attention something that occurred last Saturday in connection with the publicity affecting these defendants in that two of the newspapers throughout the day, from the first early morning edition to the late afternoon edition, carried in 72 point in one of the papers—

The Court: I think I read some of that.

Mr. Foreman: We wanted the record to show, and an agreement of counsel, that the circulation of the Houston Press—

The Court: I suggest we proceed orderly with the motion for mistrial, which is now before the Court. This matter is not.

Mr. Foreman: I was going to add it to the motion.

The Court: I don't see how in any propriety they can be considered together.

The Court: Court stands adjourned.

Mr. Foreman: I think the Court is correct.

The Court: I am ready to rule on the motion for mistrial. I have dictated my ruling. While I will give it orally in open court, I will read it from the brief draft which I have dictated. I will ask the Clerk to hand copies to the court reporter and to counsel and to the press, and I ask that I not be misquoted.

Over the week end I have considered the motion for mistrial made by the defendants. I have studied the briefs furnished by both sides and have read the cases cited. I have read no case in which the circumstances were identical with this one.

It is my opinion that the question asked by the prosecution was not prejudicial and that it was harmless. Defendant's motion for mistrial is overruled.

I am returning to the case of Nalls vs The United States, which has been discussed. In the Nalls case the matter objected to was a statement made by the prosecution to the Court in the presence of the jury. In this case it was a question asked by the prosecution of a witness in the presence of the jury. In the Nalls case, the Court was requested to instruct the jury to disregard the statement and the requested instruction was refused. In this case such an instruction will be given if requested by the defendants.

Mr. Sharpe: If the Court please, strictly subject to our position that the matter cannot be cured by an instruction to the jury, we ask the Court to give an instruction along those lines; that the Court first review what happpened concerning the questions propounded to Mr. Gonzales.

The Court: That would be to reread the question asked of Mr. Gonzales?

Mr. Sharpe: Yes. Our thought being that the jury might get it in context. Then we request the Court to instruct the jury that the question and answer shall not be considered by it for any purpose whatsoever. Secondly, that there is no burden upon the defendants—

The Court: If this request is going to be lengthy, I think we had better have it typed. Otherwise I won't be able to retain it.

Mr Sharpe: All right, sir. Shall I go ahead and make it?

The Court: All right, sir.

Mr. Sharpe: Secondly, that there is no burden in law upon the defendants or any one of them to produce evidence. Especially there is no burden in law upon the defendants or any one of them to produce evidence in aid of the prosecution's case, and next that in connection with the particular question, that the failure of a defendant or any defendants to produce either the document or testimony relating to those documents shall not be considered against the defendants in any manner.

The Court: I will give such an instruction, but I think I would have to have the requested instructions typed.

Now, I understand that Mr. Foreman has another motion to present, which I assume should be presented out of the hearing of the jury?

Mr. Foreman: Yes, Your Honor.

The Court: Would it be in order to excuse the jury for another 30 minutes, or how many minutes?

Mr. Foreman: That will be long enough.

The Court (To the Clerk): Will you tell the jury they may stand at ease until 10:30? Tell them they may stand at ease—yes, until 10:30.

Mr. Foreman: Shall I proceed, Your Honor?

The Court: You may, sir.

Mr. Foreman: May it please the Court, realizing that this Court has properly and at each extended recess warned the jury and advised the jury not to read or be influenced by anything they might read or hear, we feel that conditions have been brought about by the political opponents of these defendants in this case, setting in motion forces by mailing a letter, copies of a letter ostensibly written by one John Rutledge, the foreman of a state grand jury, signed by four active members and workers in the Freedom Party of Duval County, disseminated throughout the State of Texas, but so far as this case is concerned, given publicity in the City of Houston by two newspapers, the Houston Press with an American Audit Bureau circulation ranging from 118,000 to 120,000 daily, six days a week, the Houston Chronicle with an American Audit Bureau circulation in excess of 200,000, both of which papers commencing Saturday

morning and throughout their various editions and until late evening Saturday carried on their front pages, and in the case of the Press, in the heaviest black type ever used in headlines, to-wit: 72 point, and with a headline covering seven of the eight columns, a double headline and extending nine inches deep from the top to the bottom where the story commenced of the story on the front page, and with a heavy black quote from one of the Freedom Party members stating that 48 men down here, meaning Duval County, two grand juries and two trial juries thought Parr's cronies were guilty of wrongdoing, then these three judges throw out everything; the effect of the letter being a diatribe against the Court of Criminal Appeals of the State of Texas and singling out these defendants by name and party, and accusing them of corruption and stating and intimating that surreptitious influences only had kept them from being convicted, and in the case of the Houston Chronicle, the two first columns on the front page, with a headline approximately three inches deep, heavy black type, reading, "Flay Court for Killing Parr Cases. Businessmen Indicting Appellate Judges in Letters to People," and carrying on the first page thereof photographs of the three judges of the Court of Criminal Appeals, and repeating the same item that was put in circulation by the Freedom Party members.

Now, in addition, we offer these as a part of the record and a part of our motion for mistrial. The—and in addition to what we have already—what has already happened, and what appears here in the papers of last Saturday, we were advised this morning that before the Houston Press comes out, that they have prepared a

series of articles to be run throughout this week and perhaps longer attacking—

The Court: Do you want me to stop that?

Mr. Foreman: If you will and if you can.

The Court: I don't think I can. I would like to.

Mr. Foreman: Well, we were advised and the—one of the reporters of the Houston Press who so advised us is in the courtroom now, and hears me as I talk.

The Court: I think there are representatives from all the local newspapers in the courtroom.

Mr. Foreman: I was just mentioning to the Court my remarks are being made in the presence of a representative of that paper. It is impossible, Your Honor, for laymen who are so seldom selected for the dramatic performance of jury duty, if for no other reason than to follow the human instinct, to read, to compare whether or not that happened as he recalled it, or even perhaps to see if perchance his own name is mentioned. It is impossible to expect, human nature being what it is, that a jury of laymen will not read, and if they read, it is impossible to foresee or speculate or to determine that they will not thereby be influenced or affected, be a partisan position taken, and we say that this is not only partisan but admittedly so, and the letter itself shows that the purpose of it is to help gain or keep or regain political control of Duval County, for the letter states in effect that if conviction is not had, that these people will regain political office in Duval County. That is a

part of this letter so that with no other haven or refuge for justice to seek except the conscience of this Court and with full knowledge that this Court is as concerned as any lawyer—

The Court: And are the defendants asking that this publicity be kept from the jury?

Mr. Foreman: It is impossible. We are asking it, but at the same time knowing that it can't be done.

The Court: It is not completely impossible. This Court still has some power within these walls.

Mr. Foreman: This has already been released. This has already been disseminated. These headlines—

The Court: What you want is to keep this publicity about political interference from this jury?

Mr. Foreman: What I want is a mistrial until such time as this case can be tried free and clear of such influences and my authority on that is the Supreme Court of New England, Boston, in the Delaney case which held that due to the newspaper publicity—I believe it was Delaney. It was the income tax collector for that district that either—the Court should have waited until such hue and cry had been raised by the publicity subsided before placing the man's liberty in the scales of justice. There is no other remedy, he says, in view of the harm that has already been done. I do not believe that anything in the future that may be done—

The Court: Any time the hue and cry subsides, is it not revived when the case comes for trial?

Mr. Foreman: Not in the manner in which it is designed in this case. They wait until we get two weeks in trial, and have this broadsided over the country intoxicating the people, which the Houston papers have done. No, sir, it isn't done. As a matter of fact, the substance of the hue and cry in the spectrum of time will eventually work to the advantage of the defendants, the American sense of justice being what it is.

The Court: I have that thought. I understand the defense is that this is political, and if that is the defense, why would this not be an aid of the defense?

Mr. Foreman: May it please the Court, I am sure the Court has read what I have read.

The Court: Yes, sir, I have. I think that is my judicial prerogative. I instruct the jury not to read it, but I have a certificate on my wall, attested by the President of the United States and the Senate of the United States which I think gives me judicial knowledge that I can separate, and I zealously claim that prerogative, and I believe I can separate.

Mr. Foreman: I have no doubt the Court can, but by the same token it would be a miracle that we found 12 or 16 laymen, any one of whom had that capacity, still able and willing to serve as a jury, and I would be willing, if this case were being tried by the Court, I wouldn't be wasting my time in this motion because I know this Court would not be so affected, and it is that same discretion, foresight, and prestige that gives this Court with his broad knowledge and understanding of

the layman's mind, gained from a lifetime of association and work with these minds, it is—the Court knows, I am sure, that just the passing of a newstand and the glancing on a headline could subconsciously affect the mind of any one layman, and if one of them could be contaminated, this to which we are directing our remarks, my argument, and the Court's observation, is the greatest question confronting the administration of justice in the United States of America today, and so far there is no law passed and so far no weapon by which a defendant or his attorney can defend the rights of a defendant except relying upon a trial judge to take that position as a matter of discretion.

I had this same thing happen once before with one of these papers, Your Honor, in a murder case in this county and Judge Frank Williford was on the Bench. When we came back from lunch, a newsboy had been through and several of the veniremen had in their hands headlines, the same type as this, "Defendant Attempts to Trade Out." Without any motion at all, and based solely on the headline, Judge Williford declared a mistrial and said that he could not see how the headlines themselves, with the jury already selected and with its attention centered on that very issue, could help but be affected by such undue publicity, and reset the case until a new venire that was not centering its attention and therefore probably had been influenced to the extent it would have been. Any one of these twelve men three months from now, if they had not been sitting here on this jury when these headlines came would not have been influenced or calculated to be influenced or affected as they are calculated to be influenced and affected since they were

selected for that purpose, and since they do not have the training of the mind or the experience or the ability of the Judge, and just the possibility that even five per cent, one of them, one of the twelve or one of the sixteen, might be so influenced or affected, if not the means, the expense of another trial, ought to, we feel, suggest itself for the very careful consideration of the Court in determining whether or not this trial should proceed under these circumstances or whether or not it should be mistried and a new setting and at a time and with a jury that has not had directed to its attention from these official capacities as such to the—and as a part of our motion, Your Honor, we offer both the stories themselves and the degree of the play they would get.

I am not familiar enough with this sort of procedure to know how to get it in. We know it doesn't go to the jury, but we would like to put in the record the stories themselves.

The Court: Do you want them in the record to accompany a bill of exception, if the bill is overruled?

Mr. Foreman: That is right, Your Honor.

The Court: Very well. They will be so received and identified.

Mr. Foreman: My statement as to the circulation of these papers is based upon not only my own recollection, Your Honor, but upon an inquiry. If the prosecution has any different idea as to the circulation, I request they phone—

The Court: I think that is immaterial. The Court will take judicial notice of the fact that they are metropolitan newspapers. Is there anything further?

Mr. Foreman: That is all.

The Court: Metropolitan newspapers of the largest city in the South.

Mr. Foreman: Yes, Your Honor.

The Court: Very well. Excluding St. Louis and Baltimore, and some other states that claim to be southern states. Have they been identified?

The Clerk: The Press is Defendants' Exhibit 203.

Mr. Foreman: We are not—not 203. We don't have that many exhibits, do we?

The Court: I advised the Clerk, in view of the fact that it was stipulated that the numbers used at the previous trial of this case could be used on old exhibits without renumbering, thereby saving time, that we would start a new series, a 200 series, which would indicate exhibits identified in this second trial for this first time.

Mr. Foreman: I understand, Your Honor. I am sorry.

The Court: This being in the 200 series means it was offered in the second trial for the first time.

Mr. Foreman: I understand.

The Clerk: The Press is 203 and the Chronicle is 204.

The Court: Your motion is a motion for mistrial because of publicity.

Mr. Foreman: Yes, Your Honor.

The Court: Very well. The motion for mistrial presented this morning is overruled, and in overruling the motion, I want to state that there is no way that this Court knows of that I can stop publicity. The freedom of the press and of speech is guaranteed by the First Amendment to the Constitution, and I stated earlier that I wished I could. In the interest of trying this case in this courtroom with no outside interference, I would like to do that, but that has never been done completely. I don't know of any way to try this case without publicity, and the publicity complained of is not publicity arising from this case. I announced earlier I had read the articles, and I had stated then it was my judicial prerogative to do so. I read the articles to see if there was any reference to this case. There was no reference to this case. Counsel has stated that the letter from the political opponents of these defendants pointed out that they had been found guilty by 48 men, but none of those 48 men are on this jury. This jury is well selected, was well selected. I want to try this case without newspaper publicity being brought into it. So far, there has been no reference to newspaper publicity in the presence of the jury. My instructions are that there be no reference to newspaper publicity. I have instructed the jury they should not regard anything the read in the newspaper or hear on the radio or TV, that they should put that out of their minds. They should avoid reading articles and listening to newscasts concern-

ing this case. Again I want to say the publicity complained of is not of this trial.

I want to observe further that if this trial could be interrupted by this publicity, then any case could be aborted by publicity, and I don't think that is the intent or spirit of the law. It has been pointed out, I will mention again, that the letter was written by political opponents of these men. Because a man has political opponents, most people in public life do, does not mean that he cannot be tried for something nonpolitical, and does not mean that he cannot be tried. If a man were so pure that he had no enemies, I don't think he would be indicted in the first place.

Now, I will agree with the defendants to the extent that newspaper publicity should not be brought into this trial. Interrogation has been allowed as to political activities. The defendants have stated that is their defense and if it is it may be properly explored, but I want this case tried in the courtroom and both sides are instructed to make no reference to newspaper publicity.

Exhibits 203 and 204 are admitted for the limited purpose of accompanying a bill of exception to the Court's ruling overruling the motion for mistrial. These exhibits will not be exhibited to the jury. I think Mr. Foreman has anticipated my ruling and has moved all newspapers from sight in this courtroom, and it is the order of the Court that such newspapers will be removed from sight in this courtroom. I don't know what I can do outside the courtroom. I think I am powerless to do anything about removing newspapers outside of the courtroom. With those comments, I will again state the motion for mistrial is overruled.

Is there anything further?

Mr. Foreman: Nothing further, Your Honor.

The Court: It is now 10:30. Court will recess for ten minutes.

(Short recess.)

(The following proceedings were held in the presence and hearing of the jury.)

The Court: Be seated, please. Are you ready to continue with the testimony of the witness Rosa Perez?

Mr. Foreman: Yes, Your Honor.

7-1496 ROSA PEREZ,

being the witness who was on the stand at the time Court recessed on May 16, 1957, resumed the stand at this time, and continued her testimony as follows:

7-1496 CROSS EXAMINATION (Continued)

The Court: I observe the witness is carrying several bundles. If she wants to relieve herself of some of them until she needs to refer to them, she may place them on the table, if there is any space there. You may continue.

Q. (By Mr. Foreman) Miss Perez, among the—rather, I asked you to bring a group of your 1952 bank statements so as to show any J's that may have been inscribed over the rubber stamp endorsement of the San Diego Building & Hardware Company. As a matter of fact, I

was wrong in assuming there would be any such, was I not, Miss Perez?

A. Yes, sir.

Q. Because you did not deposit your own checks, but the person to whom you wrote them deposited them?

A. Yes, sir.

Q. And such checks, ma'am, as may have been written to the San Diego Building & Hardware Company on which the J would have normally been inscribed, is inscribed, would have been checks from other people to the hardware company rather than your checks to other people, isn't that true?

A. Will you please repeat that?

Q. I say you would not have the custom, Mr. Tovar did not have the custom of inscribing a J on his own checks, as an endorsement. It would be only on checks received, not checks issued?

A. That is right.

Q. And of course the only checks in your statements would have been checks—

A. That we sent out.

Q. —that either you or Mr. Tovar may have signed and thereby not deposited, but deposited by someone else?

A. That is right.

Q. And such checks as might have the J on them would have gone to the person who originally made them rather than back to you?

A. That is right.

Q. And that is what you have, your own checks, all you could bring and all I asked you to bring with reference to the 1952 bank statements, isn't it?

A. That is right.

Q. Thank you. Now, getting back to the last question with reference to the $12,000 deficiency assessment the

internal revenue made on Jose Tovar, did—was he ever indicted by a grand jury for income tax evasion?

A. No, sir.

Q. And was he ever indicted by a state grand jury for swindling the Benavides Independent School District?

A. No, sir.

Q. As a matter of fact, Miss Perez, he was given immunity from such indictment, was he not?

A. He was given immunity? I don't know what from.

Q. Miss Perez, I asked you to diagram a floor plan of the San Diego Building & Hardware Company. Have you done so?

A. Yes, sir. The San Diego Lumber & Hardware Company.

Q. Oh, Lumber & Hardware?

A. Yes. Here it is.

Q. All right. In what direction does the San Jacinto Lumber & Hardware Company face?

A. That is the San Diego Lumber & Hardware Company, sir. It is on a corner so it has two sides, really, for an entrance, and that would be the east side and the north side.

Q. Then are the streets named at which it is the corner?

A. They are now, sir, but I don't remember the names.

Q. And is it an intersection or do the streets cross each other completely?

A. Yes, sir.

Q. And I believe you stated that the San Diego Bank was about a half a block away?

A. From the rear end of the San Diego Lumber.

Q. From the rear end.

A. That would be the west end, I will say. It is the thwest wall towards the bank, which would be about alf a block from the San Diego State Bank.

Q. Then the—without using all those words, we will call it the store where you work and the bank where Mr. Carrillo's office was.

Now, as I understand it, the front of the store does not face on the street that the bank is on?

A. That is right, sir.

Q. Now, does the store run the entire block to the next street down?

A. No, sir.

Q. How much—how deep is the store? We will call the street the bank is on the back street because you don't know the actual name. How far is it from the rear of the store and what, if anything, is between the rear of the store and the back street?

A. Actually the lumberyard, including the building, is two lots, you see, and the rear end of the building and the rear end of the bank approximately would be half a block. Do you know what I mean?

Q. Is the rear end of the building even with the front end of the bank?

A. Even?

Q. Yes, ma'am.

A. No, they are across the street from each other. Is that what you mean?

Q. The bank—I don't have the directions in mind. The bank, as I understand, is west of the building, of the store building?

A. It is northwest, yes, sir.

Q. For—

A. See, the bank would be—

Q. This is north and this is west, according to your diagram?

A. Oh, well, yes—you see this is Mr. Tovar's office

and my office, and the bank is over here across the street.

Q. If it is just as easy for you, it is easier for me to keep north at the top because that is normally the way maps are drawn and I am used to thinking in those terms. Now, is that just as easy for you?

A. Yes, sir, I will try.

Q. Now, the bank, would that mean the bank is over here?

A. Yes, the bank is over here across the street. There is a street right here. This is practically at the end of the street. There is a sidewalk here, and there is a street there at the end of this block. Here is the back and this comes all the way to the end of the block.

Q. You call this the bank street because that is the street the bank is on, but across the street. This is one of the fronts—one of the front openings is north of the store and the other opening is on the east side of the store?

A. That is right, sir.

Q. We will just call this east street and this bank street?

A. Yes, sir.

Q. Now, I will ask you, where is your office, please, ma'am?

A. My office includes all this section up through here, all of this here (indicating).

Q. Does it go all the way over to the west side?

A. No, this is a walled-in vault. To go out, I would have to come out through here. There are no doors to come out here, but this is Mr. Tovar's office and I have access to his office.

Q. The very northwestern corner is Mr. Tovar's office?

A. Yes, sir.

Q. Then next you have written here "wall." Is that a vacant room or a solid room?

A. It is a wall, a vacant wall. We have a walk-in vault right next to there.

Q. And then the restroom?

A. Yes, on the other side.

Q. Then you have no outside opening for your office?

A. Except this one.

Q. Except the one leading to the east, or the store?

A. And the one leading into Mr. Tovar's office.

Q. But that is not outside. That leads into Tovar's office?

A. That is right.

Q. And you normally work at what point?

A. Right here at this little stool and at the window, and to do my regular posting, I take this position and do my work here.

Q. What kind of wall is there along the east side of the place, the various places where you work?

A. A glass wall.

Q. A counter built up?

A. To a certain height, five feet or maybe a little over, and the rest is glass and then there is another roof, you know, and then still another roof. It is a room within a room.

Q. You are walled off by glass and wood paneling from the store?

A. That is right.

Q. You have an opening there at the window?

A. Yes, sir.

Q. How large?

A. I would say about three or four feet.

Q. Across?

A. Across

Q. And how high?

A. It is about—the glass is cut, you know, in the shape sort of like this, and there is about—

Q. By this, you mean oval?

A. Straight and a little round. It is about two or three inches high, I think, and then I have a hole in the glass a little higher up.

Q. Where that oval, or what I call an oval, and what you have got up a little over there, where the opening is, how big is that, please, ma'am?

A. I would say about two and a half or three inches.

Q. The whole opening is two and a half to three inches?

A. That is what I think. I can't calculate, but that is what I think.

Mr. Foreman: We ask that this be marked.

(Diagram marked by the Clerk as Defendants' Exhibit 205.)

Q. The diagram of the Tovar store, San Diego Lumber & Hardware Company is, for the record, Defendants' Exhibit 205.

The Court: It is offered?

Mr. Foreman: Yes, Your Honor.

The Court: It is admitted in evidence.

Q. Now, Miss Perez, with reference to these various books in evidence as cash and credit sales for Govern-

ment's Exhibits 101 and 102, how did you get the information to show what sales have taken place?

A. How do I get the information? I get the—the clerks write out the invoices, is that what you mean?

Q. Yes, those papers that constitute the sales. Government's Exhibits 102 and 103 are turned over to you, or are they left in the cash register by the clerks?

A. They are left hanging on a hook, and I pick them up and check them before I post them, and I also check to see that they are numbered. I check to see that they are in consecutive order and see no number is missing so I will have all of my invoices.

Q. Among the people who act as salesmen and work on the floor and wait on customers there is Jose Tovar himself?

A. He is one of them.

Q. And how many others besides he?

A. In 1952, or through the years?

Q. 1952?

A. Well, I don't remember exactly, but we have always had about three or four people working there, however, the truck driver never makes any invoices because he can't write.

Q. But you yourself were not a clerk?

A. Sometimes if we are short on hands, I will help.

Q. What was the custom in the fall of 1952 as far as you were concerned?

A. Well, I am the bookkeeper and I am mostly in the office, and I do the duties I have to perform there in the office, and it may have been or it may not have been that if anybody came in say at noon, or there was no one else to wait on them, I would have waited on them.

Q. But it was only rarely you acted as a clerk?

A. That is right.

Q. But it was a customary place of duty for Jose Tovar as a clerk waiting on customers, wasn't it?

A. Not necessarily so, sir.

Q. Well, what was his usual post of duty when in the store?

A. He is there mostly to supervise and to direct and to work out estimate, and just to direct the whole thing.

Q. Well, do you yourself ever check out and sell anything, either a stove or anything else, personally as a clerk to either O. P. Carrillo, D. C. Chapa, or any of these other defendants?

A. I don't remember that I personally have waited on any of them, sir.

Q. How do you all determine at the store your profit or loss for the year? Do you not take inventory for that purpose?

A. We take inventory, yes, sir.

Q. And you would take that at the end of the year between Christmas and New Year's?

A. We would take it as a general rule on the 10th of December.

Q. Then you would run from one 10th of December to the next?

A. That is right.

Q. On your fiscal year, is that correct?

A. That is right, sir.

Q. Ma'am?

A. That is right, sir.

Q. And was not the amount of your inventory, say, the 10th of December, 1951 and the amount of your inventory the 10th of December, 1952 used as a basis for computing your income tax for the year 1952?

A. Yes, sir.

Q. Then any item sold by Jose Tovar and not cleared through you that might have appeared as an inventory item December 10, 1951 and did not appear as of December, 1952, would show a loss to the extent of that wholesale value of that item, wouldn't it?

A. I imagine so, sir.

Q. And thereby reduce the amount of your income tax, wouldn't it?

A. If that had been, yes, sir.

Q. And likewise any payment made by any person and the check not turned over to you but cashed and therefore not entered on the books by you would be net to that person and not accountable as income tax, wouldn't it?

A. If that were true, yes, sir.

Mr. Foreman: That is all, Your Honor.

7-1508 REDIRECT EXAMINATION

Q. (By Mr. Bottler) Rosa, with reference to the checks which were payable to the San Diego Hardware & Lumber Company which you testified on cross examination had been cashed by Jose Tovar, what was done with the proceeds of those checks?

A. Any check that was received by San Diego Lumber & Hardware Company that exceeded the amount of the sale, the proceeds was returned to the person who paid the check.

Q. Now, what about the amount of the bill?

A. The amount of the bill I calculated and made a receipt, or whoever made the collection made a receipt.

Q. With respect to those checks that you said Jose Tovar cashed at the bank, what did he do physically with the cash that he received from those checks?

Mr. Foreman: May it please the Court, that would call for hearsay and a conclusion of the witness unless she was with him at the time he cashed the check. He is asking what another man did who went to the bank with money he got from checks.

Mr. Bottler: Your Honor, if I may reply to defendants' objection, Mr. Foreman asked her whether she knew about any checks made payable to the San Diego Lumber & Hardware Company which were cashed by Jose Tovar at the bank. I am referring to those checks and asking her if she knows what happened to the cash proceeds of those checks after they were cashed by Jose Tovar at the bank.

Mr. Foreman: If it is a specific check about which she has knowledge, it would not be hearsay, but as to these checks, calling for all checks, it would be hearsay.

The Court: Let's consider it orderly. You state Mr. Foreman asked her what?

Mr. Bottler: Mr. Foreman asked her if any checks made payable to the San Diego Lumber & Hardware Company were cashed by Jose Tovar at the bank. As I recall, we objected.

The Court: What was the answer?

Mr. Bottler: The answer was yes. I am now asking

her what happened to the proceeds of those checks, if she knows, the cash.

The Court: Very well. I think your question is, what happened to them, if she knows. I think you ought first to test her on whether she does know.

Mr. Foreman: May it please the Court, we ask that he identify the specific checks.

The Court: Can that be done?

Mr. Bottler: No, Your Honor. I am just trying to develop the matter brought out on cross examination. Mr. Foreman asked if she knew about any checks cashed by Jose Tovar at the bank.

The Court: And her answer is that she does know?

Mr. Foreman: I asked her if it were not a practice of this man to go to the bank and cash large checks, and she said it was. That is what the record will reveal as to what my question was. I didn't ask specifically about any checks. If he is going—he is asking her about any checks.

The Court: Let's go back to the question objected to.

Mr. Bottler: Let me rephrase the question.

The Court: Very well. I suggest it be done.

Q. (By Mr. Bottler) With reference to the checks about which Mr. Foreman asked you on Friday, that is the checks which you said you had knowledge that Mr. Tovar

had cashed at the bank, checks of the San Diego Lumber & Hardware Company, if you know, will you state what was done with the cash which was obtained from those checks?

Mr. Foreman: Just a minute, little lady. Don't answer until I can get a ruling of the Court. May it please the Court, may we approach the Bench out of the hearing of the jury?

The Court: You may, sir.

(The following proceedings were held at the Bench out of the presence and hearing of the jury.)

Mr. Foreman: May it please the Court, the answer of this witness may unconsciously be highly prejudicial and inflammatory.

The Court: I think probably we had better test her out of the presence of the jury and see what her answer will be. The jury will be withdrawn.

(The jury was withdrawn and the following proceedings were held out of the presence and hearing of the jury.)

The Court: Let the record show that these proceedings are without the presence and hearing of the jury. You may continue.

Q. (By Mr. Bottler) Would you please answer the last question?

The Court: I think it should be read again.

The Official Reporter (Reading): "Question: With reference to the checks about which Mr. Foreman asked you on Friday, that is the checks which you said you had knowledge that Mr. Tovar had cashed at the bank, checks of the San Diego Lumber & Hardware Company, if you know, will you state what was done with the cash which was obtained from those checks?"

Mr. Foreman: Yes, ma'am. That was on Thursday, though.

Mr. Bottler: All right. On Thursday.

A. That Mr. Tovar would go cash checks when we failed to have enough change to give change for excess checks. He would go cash the checks and bring the money to me, and I would count the money to see that it was correct, and I would collect what was owing to us for the accounts called for, and the balance of that change was returned to whoever brought the check.

Mr. Foreman: May it please the Court, I have no objection to that. That is not the answer I anticipated except insofar as the inference is that that was done with all checks. I have no objection to that being in the record to the effect that he did do that on occasion, but the inference that that is the only time that such checks were done in that manner, I think, is a conclusion of the witness and calls for hearsay.

Mr. Bottler: Since the jury is out, may we go forward with a couple of other questions dealing with this matter?

The Court: I suggest it be done if they are questionable.

Q. (By Mr. Bottler) Do you know of any practice of Jose Tovar cashing checks made payable to the San Diego Lumber & Hardware Company wherein what you have just stated was not done with the proceeds?

A. Will you please repeat that?

Q. I will rephrase it. Do you know of any practice with respect to Jose Tovar cashing checks made payable to the San Diego Lumber & Hardware Company where he did not turn over the proceeds of the check to you for disbursal as you have testified?

A. I don't know of any time he has ever kept any money for himself. Whatever belongs to the San Diego Lumber & Hardware Company, he brings to me or deposits it himself.

Mr. Foreman: We don't think that—I think the first part of that question is admissible. I don't think her last is. It invades the province of the jury, is a conclusion of the witness, and is hearsay.

Mr. Bottler: It wouldn't be hearsay, Your Honor, if he would bring the deposit slips back on the occasions when he deposited money.

The Court: What is the relevancy of the latter part of that question and answer?

Mr. Foreman: She was stating he always did—

The Court: Why is it relevant in this case? Mr. Tovar is not on trial.

Mr. Foreman: May it please the Court, the Government is inferring and suggesting by innuendo and possibilities and happenstance that this check for $623.53 dated November 4 and cashed November 14, 1952 is a fraud manufactured by the defendants in this case, and tied to some particular figure on a bank statement. It is the defendant's position that O. P. Carrillo paid for all of the office materials with that check, and the very things that are represented by Government's Exhibits 101 and 102 here and Gabriel Garcia's testimony and this young lady's testimony—

The Court: I understand it. I will allow the testimony of this witness which she has just given out of the hearing of the jury. How do you propose this to be handled? Do you want to ask those questions again, or is it suggested the questions and answers be read?

Mr. Foreman: I suggest the reading, however, are you through with this portion of the testimony? This young lady testified at Bryan and somewhere else, Del Rio I am advised, I was not present, to the cashing by Jose Tovar of certain Benavides Independent School District or some school district checks and the turning over of the proceeds to an R. L. Adama, who was county superintendent of schools, not authorized or connected with the Benavides Independent School District, just the county school district, and the reason I asked permission to approach the Bench and recommended this be developed out of the hearing of the jury was to avoid either by intent or otherwise

any reference to that which might have been prejudicial or inflammatory.

The Court: To whom?

Mr. Foreman: R. L. Adama.

The Court: The transaction with R. L. Adama and the Common School District? Does counsel expect to ask any such questions of this witness?

Mr. Bottler: No, Your Honor, although I do think it would be proper in view of the fact that defense brought out immunity had been granted by the State, and that immunity as I understand it—

The Court: To whom?

Mr. Bottler: Jose Tovar, and I don't know—I would imagine this immunity dealt with the transactions of the County School District and R. L. Adama, isn't that correct?

Mr. Foreman: I haven't offered what it dealt with. I have only established immunity was given.

The Court: I want to avoid getting into matters that are too far extended from this case or matters of a fringe nature. I want to get on with the trial of this case.

Mr. Foreman: That is the reason I asked to approach the Bench, and the reason it would be prejudicial and I submit it would be if it were gone into. He says he doesn't intend to do it.

Mr. Bottler: All right. I will not ask any questions.

Mr. Wilkey: Your Honor, I point out by the fact that it is used here by the defense, that suggestions and evidence from which inferences can be drawn are being thrown in by the defense, and we are not allowed to go further into it or fully develop it. For instance, this immunity shown, the young lady says Mr. Tovar was given immunity—

The Court: He is not a witness.

Mr. Wilkey: Yes, but the inference the jury would be invited to draw and will be invited to draw in argument was that Mr. Tovar was given immunity in some instance in connection with the Benavides Independent School District.

The Court: I don't want immunity to come into this case.

Mr. Wilkey: The defendant already has.

The Court: What does the Government want to do about Mr. Tovar's immunity?

Mr. Wilkey: One thing would be to show Mr. Tovar's immunity was not given in connection with this here, but in connection with the county school superintendent's cashing of these checks and thus has no relation to this case.

The Court: Now, Mr. Foreman—

Mr. Foreman: He can't prove that, Your Honor. I am sure he wouldn't state anything he doesn't believe to be true, but if he was furnished with a copy of the San Diego grand jury records—

The Court: I think generally speaking the testimony of this witness as to what was done with Mr. Tovar is hearsay.

Mr. Foreman: May it please the Court, we submit that this check, or checks similar to this, according to the internal revenue—

The Court: If I open up the question of Mr. Tovar's immunity in State Court in Del Rio, how much time is going to be consumed?

Mr. Foreman: This was not in State Court in Del Rio. It was in Duval County a long time before Del Rio. It was in connection with the grand jury, and may it please the Court we feel that a check of the records showing the $12,000 deficiency assessment and the record showing he has not been indicted for income tax and the fact that it is our theory that this $623.53 check was taken, collected, and written by Jose Tovar and never passed through this lady's hands is a very material part of the defendant O. P. Carrillo's explanation as to how the $623.53 check of November 4, 1952 of O. P. Carrillo and D. C. Chapa could have been collected, and so far as—

The Court: Hasn't that been inquired into?

Mr. Foreman: Yes, sir, but it involves the income tax liability of Jose Tovar and we are prepared to show and intend to ask, if permitted, Mr. Wilkey as a witness if

the Federal Government has respected all of the immunities granted.

The Court: I don't want to get into Mr. Wilkey's testimony. He is not on the stand. You have indicated you will call him, but I would rather cross that bridge when we come to it.

Mr. Wilkey: Your Honor, I just want to call your attention to this: He has stated he considers the evidence if offered as to an inquiry or assessment being made against Mr. Tovar for $12,000 as pertinent and material to his case. I call that to your attention now because we propose to go into that and show that after inquiry and examination of the books of Mr. Tovar, the internal revenue concluded not a cent was owing and nothing was ever collected because there was nothing owing. We have evidence to show that. It is not material, but he has interjected and stated it is material to his case. The same thing for the state immunity.

The Court: What is going to be gone into with this witness relative to Tovar's immunity?

Mr. Bottler: I intend to ask this witness, in response to Mr. Foreman's question, were any indictments returned by grand jury against Jose Tovar, were any charges ever filed by anyone against Jose Tovar for swindling of the Benavides Independent School District. That is not directly on the immunity question but on a related question. The Court will recall Mr. Foreman asked this witness the question, was any indictment ever returned by a grand jury against Jose Tovar for swindling from the Benavides Independent School District.

Mr. Foreman: I asked that question?

Mr. Bottler: I think so.

Mr. Foreman: Well, I won't say I didn't.

Mr. Bottler: In rejoinder to that, I was going to ask if any charges had ever been filed by anyone against Jose Tovar for swindles against the Benavides Independent School District.

Mr. Foreman: Your Honor, we think that question would not be proper because, we state to the Court, no charge was ever filed against any of these defendants—

The Court: They are not being tried for anything except the charges in this indictment.

Mr. Foreman: He is suggesting that which the jury doesn't know, that an indictment can only proceed when a charge has been filed. My question had nothing to do with any charges filed. My question had to do with indictments and immunity. He is suggesting by that question to a lay jury that a grand jury cannot indict except when a charge has been filed. That is not the law, it is not the truth, and it has no predicate in any of the various indictments about which we have asked various witnesses in this case. The presumption is that it is the law and therefore charges have need to be filed in order to get an indictment is our objection. Also it calls for hearsay.

Mr. Bottler: Your Honor, in response to Mr. Foreman's objection, the inference which he draws from my question.

I fail to see in my limited intelligence and experience. How if I ask if any charges had been filed that would suggest charges had to be filed before a grand jury can act upon it, I don't know. The Court may take judicial notice charges may or may not be filed. Charges are filed upon which the grand jury may take no action.

Mr. Foreman: The jury doesn't know that.

The Court: I don't think this witness can know except what she understands about it. I think one would have to go to every county in the state and make a search.

Mr. Bottler: That is true, Your Honor, and we would not go into it if Mr. Foreman had not asked her if he had ever been indicted. We are asking if any charges had ever been filed.

The Court: Her answer to has he ever been indicted her answer was no. Do you want to dispute that?

Mr. Bottler: No, Your Honor.

Mr. Wilkey: We want to show there was no reason for any indictment.

The Court: When you get to that, you get to trying Mr. Tovar for something for which he has not been indicted. I want to try these defendants and not Mr. Tovar, who is not here.

Mr. Foreman: Your Honor, we want to advise Mr. Wilkey he is 100 per cent wrong about state immunity to

Mr. Tovar being in connection with the R. L. Adams case. It was in connection with the George B. Parr case.

The Court: I want to try Mr. Parr and the other defendants on this indictment, and not some other indictment in some other county, so we will no further go into that matter. The jury will be recalled.

Mr. Foreman: Will the questions be read and the answers read?

The Court: Yes, sir.

(The following proceedings were had in the presence and hearing of the jury.)

The Court: Before the jury was excused, a question was raised as to the propriety of some testimony this witness might give, and the questions were asked and the answers were given out of the hearing of the jury. The Court has ruled that those questions and answers were proper, and I will now ask the court reporter to find those questions and answers and to read the questions and answers to the jury.

The Official Reporter (Reading): "Question: Do you know of any practice of Jose Tovar cashing checks made payable to the San Diego Lumber & Hardware Company wherein what you have just stated was not done with the proceeds?

"Answer: Will you please repeat that?

"Question: I will rephrase it. Do you know of any practice with respect to Jose Tovar cashing checks made payable to the San Diego Lumber & Hardware Company where he did not turn over the proceeds of the check to you for disbursal as you have testified?

"Answer: I don't know of any time he has ever kept any money for himself. Whatever belongs to the San Diego Lumber & Hardware Company, he brings to me or deposits it himself."

The Court: I want the record to show that those two questions and answers were read aloud to the jury by the court reporter. Have you made the notes?

The Official Reporter: Yes, sir.

The Court: Very well. Continue.

Q. (By Mr. Bottler) What was done with the deposit slips when he deposited the money or checks?

A. It was brought back to me, taken to the bank and brought back to me.

Q. And is that or not kept in your records?

A. Yes, sir.

Q. All right. Now, you were asked a hypothetical question on cross examination pertaining to if Jose Tovar had sold any merchandise and had not reported the sale to you as bookkeeper, would that show up as a loss at the end of the year after the inventory was taken. I will ask you whether in your service as a bookkeeper you ever discovered any such occasion when Jose Tovar did sell merchandise and it was not recorded in your books?

Mr. Foreman: We object to that, Your Honor. It presupposes what is not in the record, that she would have any way or means of knowing that.

The Court: The question is does she know of any occasion, and I will allow the question. It has been raised by the defense.

A. Will you please repeat it?

Mr. Bottler: Would the reporter read it back aloud?

The Official Reporter (Reading): "All right. Now, you were asked a hypothetical question on cross examination pertaining to if Jose Tovar had sold any merchandise and had not reported the sale to you as bookkeeper, would that show up as a loss at the end of the year after the inventory was taken. I will ask you whether in your service as a bookkeeper you ever discovered any such occasion when Jose Tovar did sell merchandise and it was not recorded in your books?"

A. No, sir.

Q. May I see Exhibit No. 205?

(Tendered to counsel.)

I hand you what has been marked and admitted as Government's Exhibit 205. I will ask you where is the bank located with respect to the north wall of the store?

A. It is located across the street on the north side of the —northwest side of the San Diego Lumber & Hardware Company.

Q. And are there or not windows and doors along the north side of the store?

The Court: Mr. Bottler, you referred to Government's Exhibit 205. It is Defendant's Exhibit 205?

Mr. Bottler: I appreciate the correction, Your Honor.

Defendants' Exhibit 205, being the plat of the store, and state whether or not you, from looking out those windows and doors which appear on the northwest side of Defendants' Exhibit 205, can see the bank building and the second story thereof?

A. Yes, sir.

Mr. Foreman: Pardon me. I got the last half of it, but I didn't get the first two words of that question. Would you read the question to me, little lady?

The Official Reporter (Reading): "Defendants' Exhibit 205, being the plat of the store, and state whether or not you, from looking out those windows and doors which appear on the northwest side of Defendants' Exhibit 205, can see the bank building and the second story thereof?"

Q. (By Mr. Bottler) Miss Perez, the office which you have stated that you worked in is the long narrow office to the west of the main storeroom, is that correct?

A. To the east—well, yes, it is at the rear and in the west, but it faces the east.

Q. Your office faces to the east and faces the main storeroom?

A. That is right, sir.

Q. Now, where is the door going into that office with respect to the north wall? About how far from the north wall is it?

A. I would say it is about three feet from the north wall.

Q. And where is the door into Mr. Jose Tovar's office?

A. From there it is about three or four feet, I imagine.

Q. And it was in a direct line running east and west?

A. Yes, sir.

Q. All right. Now, where is the register located on which the deposit stamp was kept?

A. It is practically right at the entrance. I don't have very much working space here. You see this is a desk, and it is just a panel door.

Q. All right, and is it immediately adjacent to the wall of Mr. Tovar's office and the door going into it?

A. Yes, sir.

Q. And about how far from the door going into your office?

A. About three feet.

Q. All right, now state whether or not those doors are kept open?

A. Yes, sir, they are kept open. In the wintertime when it is very, very cold, I close them.

Q. Now, with respect to the deficiency assessment of $12,000 which was testified about both on cross and this morning, against whom was the deficiency assessed?

A. Against the three members of the partnership.

Q. And who were they?

A. Mr. Jose Tovar, his mother, Mrs. V. P. Tovar, and his sister-in-law, Mrs. Leonares Tovar.

Q. All right, and was anything paid on that assessment?

A. No, sir.

Q. Is the San Diego Lumber & Hardware Company partnership, to which you referred, of those three persons?

A. Yes, sir.

Mr. Bottler: No further questions.

7-1528 RECROSS EXAMINATION

Q. (By Mr. Foreman) Who is the managing partner?

A. Mr. Jose Tovar.

Q. Where do the other two, the two you mentioned—who were they?

A. His sister-in-law and his mother.

Q. Do they ever work in the store?

A. No, sir.

Q. With reference to whether or not you caught Jose Tovar selling or delivering merchandise and not reporting it to you, the fact that he didn't report it to you would be evidence that he didn't want you to catch him, wouldn't it?

Mr. Bottler: That obviously calls for the rankest kind of conclusion.

The Court: Objection sustained.

Q. Were you or not asked, or did you or not testify you had never so caught him selling, to Mr. Bottler? You had never caught Tovar selling merchandise and not reporting it?

A. That I never knew of such a transaction.

Q. Well, all right. You used the word knew instead of catching, is that correct?

A. That is right, sir.

Q. If he had sold such merchandise and had not reported it to you, it would have of itself been evidence he didn't want you to know about it?

Mr. Bottler: The same question the Court has already ruled upon.

The Court: Yes, and isn't it argumentative, Mr. Foreman?

Mr. Foreman: Yes, I am sorry, Your Honor, I thought it was the catch or knowing the Court ruled on.

The Court: Has this witness used the word catching? Isn't that the language of counsel?

Mr. Foreman: She didn't. I used the word in interpretation.

The Court: She said in answer to one of your questions, said she did not know of that.

Mr. Foreman: I invented it. I interjected the word in the record.

The Court: You may continue.

Q. (By Mr. Foreman) Miss Perez, have you ever watched Jose Tovar so as to see whether or not he was selling items out of the store and not reporting the sales to you?

A. I would think that would be an insult, sir. I don't have to watch him.

Q. Then will you please answer the question. Have you ever done so?

A. No, sir.

Q. Then had he desired to profit by not paying income tax on a given item of merchandise, he could easily have sold such merchandise out of the store without your knowing about it, couldn't he?

Mr. Bottler: Your Honor, it is duplicitous, calls for a conclusion on the part of the witness, and is purely argumentative.

The Court: Objection sustained.

Q. (By Mr. Foreman) Miss Perez, please tell the width east and west of the space where you work, how wide across your office was?

A. I am not very good at calculating distances, but I would say that from wall to wall—is that what you mean, or from desk to wall?

Q. No, ma'am. I mean from the east door.

The Court: I suggest you indicate on the diagram what dimensions you want. You seem to have a good diagram.

Q. This is the east wall (indicating). The store proper is here.

A. Oh, this is the east wall to my office.

Q. Is it? You've got it marked as east to west, this is north and this is south. This window here is at the east wall?

A. Yes, sir.

Q. We will say from the east wall to the west wall, how many feet is it across?

A. I would say about six feet there, sir.

Q. And from the north wall to the south wall, how far is it?

A. I don't know. I can give it a try.

Q. Give us some space here in the courtroom by comparison?

A. I would say it would be from the end of the steps down to the beginning of that last desk.

Q. The desk at which Mr. Vernioux is sleeping?

A. Yes, sir.

Q. That would be, may we agree, about—about how many feet?

A. To where Mr. Freeman is sitting, more or less.

Q. Would that be about 17 or 18 feet?

A. I imagine so, sir.

Q. And your normal places of duty, you state, is where?

A. Well, actually it all depends on what type of work I am doing at the time.

Q. But where do you do most of the work? Is there anything you do most at any one given place?

A. Yes, right there at the posting wall.

Q. Then it would be against the east wall and about the center of the distance between the door jamb and the end of your office, wouldn't it?

A. Yes, that is right.

Q. Then you would be facing east, and the bank is west, and in order to see anything delivered at the bank, you would have to walk down about seven or eight feet and then go into Mr. Tovar's office and look out this window?

A. Yes, sir.

Q. And how much, if any of your time, do you actually spend in Mr. Tovar's office?

A. It all depends on how much work I have to do. In the summertime, I usually have time to sit and talk over the phone, read.

Q. Do you know whether or not you were sitting there talking over the phone or not, or reading most of the time during the daytime?

A. No, not most of the time, no, sir.

Q. How much of the time in any given time do you have to sit there at the phone or read at Mr. Tovar's desk?

A. In an entire day?

Q. Yes.

A. Oh, I would say never over an hour. Less than an hour. Sometimes 15 minutes, sometimes 10, sometimes 5.

Q. Would that usually be at noontime, lunchtime?

A. Not necessarily.

Q. Then except when you would happen to be in Jose Tovar's office, you couldn't see west at all, could you?

A. That is right, sir.

Q. Because there is about 12 feet of space, assuming that is six feet, and solid wall along the west wall of your office?

A. That is right.

Mr. Foreman: May we pass this to the jury, Your Honor?

The Court. Yes, sir.

Mr. Foreman: That is all, Your Honor.

Mr. Bottler: No further questions.

The Court: Very well. You may step down. The Government may call its next witness.

Mr. Wilkey: Your Honor, our next witness is on his way

here at this time, and will be here shortly after twelve. We suggest an early adjournment.

The Court: Very well. The jury is reminded of the instructions previously given. Court is recessed until 1:45. I will ask that the attorneys remain briefly.

(The following proceedings were held out of the presence and hearing of the jury.)

The Court: Will the record indicate that these proceedings are without the presence and hearing of the jury. I will ask that the reporter during the noon recess prepare the requested instructions of the defendant, and I would like to have that transcribed and on my desk in chambers at 1:15 please.

Court is recessed until 1:45.

AFTERNOON SESSION—MAY 20, 1957

(The following proceedings were held out of the presence and hearing of the jury.)

The Court: Be seated, please.

Mr. Sharpe, this morning you requested instructions to the jury relative to the—after Court had overruled the motion for mistrial, the motion growing out of the question asked last Thursday. You then requested some instruc-

tions to the jury. I have had your requested instructions transcribed and they read: "Yes, our thought being that the jury might get it in context," meaning the question. "Then we request the Court to instruct the jury the question and answer shall not be considered by it for any purpose whatever." Now, there was no answer to the question. The matter objected to was a question asked by the United States Attorney, Mr. Wilkey. The record reflects no answer. It is my recollection that there was no answer, so do you want to reform your requested instruction in that part and request that the Court instruct the jury that the question is not to be considered?

Mr. Sharpe: If the record shows there was no answer, I will so reform the request.

The Court: That is correct. I have a transcript of what transpired during the questioning of the witness R. R. Gonzales. Mr. Wilkey asked the question, then Mr. Foreman: "We object to that as calling for a conclusion of the witness as to what is relevant." The Court: "I think the willingness or unwillingness of the witness is immaterial to this case."

Then Mr. Foreman: "May we approach the Bench with the stenographer," and out of the hearing of the jury made the motion for mistrial. The transcript indicates no answer and it is my recollection that there was no answer, but I just wanted to get that clear. Then your request will be that the Court read the question objected to and then give appropriate instructions?

Mr. Sharpe: Your Honor, I assume that the Court will

give the date upon which it happened and we will have a sufficient background?

The Court: I will.

Mr. Sharpe: I then so reform it.

Mr. Wilkey: The Court has referred to that question having been asked on Thursday. Actually I believe it was Wednesday afternoon, and the motion made and discussed on Thursday morning before the jury came in.

The Court: Yes, that is correct.
Bring the jury in, please.

(The following proceedings were were had in the presence and hearing of the jury.)

The Court: Gentlemen of the Jury, you will recall that last Wednesday afternoon, the afternoon of May 15, 1957, during the interrogation of the witness R. R. Gonzales, you will recall that Mr. Gonzales identified himself by his testimony as the present tax assessor and collector of the Benavides Independent School District. A question was asked of the witness R. R. Gonzales by Mr. Wilkey, United States Attorney, which was objected to, and I will now read that question to you so you will know what it was and what has been objected to, and I will give you some instructions concerning it. The question asked by Mr. Wilkey of Mr. Gonzales was, "Are you willing to bring what other records remain in the School District office there which may be relevant to the case at the request of either defense or prosecution, if we specify the records?"

The question was not answered, but an objection was made to it. You are now instructed that the question shall not be considered by you for any purpose whatsoever. You are further instructed that there is no burden at all upon the defendants or any of them to produce evidence. Especially there is no burden in law upon the defendants or any of them to produce evidence in aid of the prosecution's case, and that in connection with the particular question, that the failure of a defendant or any of the defendants to produce either the documents or testimony relating to those documents shall not be considered against the defendants in any manner.

Very well, gentlemen. That concludes the instructions, and the Government may call its next witness.

7-1538 JOHN H. YOCHEM,

a witness called in behalf of the Government herein, having been first duly sworn on oath testified as follows, to-wit:

7-1538 DIRECT EXAMINATION

Q. (By Mr. Bottler) What is your name, sir?

A. John Yochem.

Q. Where do you live?

A. In Corpus Christi.

Q. And what do you do for a living?

A. I own the John H. Yochem Company, an office furniture store.

Q. How long have you had that business?

A. About eight years.

Q. Do you know O. P. Carrillo?

A. Yes.

Q. Would you identify him?

A. Yes (indicating).

Q. Is that him standing up?

A. Yes.

Q. When was the first time you ever saw O. P. Carrillo?

A. Mr. Carrillo came in my store in the late summer of 1952.

Q. Did you have any conversation with him at that time?

A. Yes, he was contemplating opening an office, and he had come in to look for some office furniture.

Q. Did he buy any furniture?

A. Subsequently, yes. Not at that time.

Q. Do you recall where his law office was to be located?

A. I don't recall that it was mentioned then. The law office was located in San Diego.

Q. Did you have any discussion of who was to pay for any furniture if he bought some from your store?

A. Either then or later?

Q. At the time? We will keep the testimony pertaining to that question.

A. I believe mention was made at that time he would be working for the Benavides Independent School District.

Q. Now, did he purchase any furniture at the first occasion he came to your store?

A. No.

Q. Did you ever have any other conversations with him concerning furniture, office furniture?

A. Yes, at a later date I talked with him in the offices of the Benavides Independent School District in Benavides.

Q. Who else was present at that conversation?

A. A person who was going to be in the law office with him, another lawyer, and Mr. Carrillo's brother.

Q. And what was his name?

A. Oscar.

Q. Did you say Oscar?

A. Yes.

Q. All right, sir. Now, what was said at that time about office furniture for O. P.?

A. Well, the selection of furniture was made at that time for his offices.

Q. Where was the furniture to be delivered to?

A. To be delivered to his office in San Diego.

Q. Was it to be paid for by cash or by charge?

A. By charge. The normal procedure.

Q. And to whom was it to be charged?

A. To the Benavides Independent School District.

Q. I will hand you what has been marked for identification as Government's Exhibit 99, and ask you if you can identify it?

A. Yes. this is the furniture for his office.

Q. Is that the original invoice?

A. It is our store copy. The original invoice was mailed to the school district.

Q. Now, was the furniture, which is reflected and set out in this office copy of the invoice, delivered to O. P. Carrillo?

A. That is correct.

Q. Where was it delivered to?

A. To San Diego.

Q. And where was it put in San Diego?

A. In Mr. Carrillo's offices, which were above the bank, I believe, in San Diego.

Q. Were you personally present when any of this furniture was so delivered?

A. Yes.

Q. Did you have any occasion to sell other furniture to the Benavides Independent School District?

A. Yes, I sold some lounge furniture to the School District.

Q. And who ordered that?

A. Oscar Carrillo.

Q. And where was it delivered?

A. To Benavides.

Q. To the School Ditsrict office, or where?

A. That is correct, to the School District office.

Q. I will show you what has been marked for identification as Government's Exhibit 100, and ask if you can identify it?

A. Yes, this is the invoice.

Q. Is that the original of the invoice or your office copy?

A. The office copy. The original was mailed to the School District.

Q. After the original of these two invoices were mailed to the School District, did you receive anything from the School District?

A. Yes, the School District paid both invoices with one check.

Q. Whose check was that?

A. The Benavides Independent School District.

Mr. Bottler: The Government offers in evidence Government"s Exhibit 99 and Government's Exhibit 100.

Mr. Foreman: The defendant joins in offering it, Yout Honor.

The Court: Government's Exhibits 99 and 100 are admitted in evidence.

Q. What was the total cost to the School District of the furniture which was delivered to O. P.'s office in San Diego?

A. $1,094.

Q. And what was the cost of the furniture which was delivered to the School District at Benavides, which was ordered by Oscar Carrillo?

A. $159.40.

Q. Who told you to charge the furniture to the Benavides Independent School District, that is the furniture that was delivered to O. P.'s office in San Diego?

A. I believe O. P. did, or possibly Oscar. I don't remember.

Q. Where was that order given for the District?

A. At what time of the year?

Q. Which one of these conversations that you related?

A. At the time that I discussed the furniture with O. P. in Benavides.

Q. All right. Were both Oscar and O. P. present during that conversation?

A. Yes.

Mr. Bottler: No further questions.

7-1544 CROSS EXAMINATION

Q. (By Mr. Foreman) Mr. Yochem, what was your purpose in going to Benavides?

A. To secure the order for the furniture.

Q. And who asked you to come to Benavides?

A. O. P.

Q. That is O. P. Carrillo?

A. Right.

Q. Did he ask you to come and talk with the Benavides Independent School Board of Trustees to verify something he told you?

A. I don't recall the exact wording. I was requested to come to Benavides, and I discussed it with O. P. and Oscar.

Q. Did you also talk to the president of the School Board about it?

A. I don't remember.

Q. Stand up, Mr. Saenz. Do you recognize Mr. Octavio Saenz?

A. I don't recognize him, no. It is possible he was there. I don't remember.

Q. Tell the jury whether or not O. P. Carrillo told you that he was going to collect delinquent taxes for the Benavides Independent School District, and that his commissions on his taxes were to be paid to you on the furniture?

A. Well, the details I don't remember. I remember O. P. told me he would be doing work for the School District. I seem to recall it was in the collection of delinquent taxes. I don't remember the details.

Q. Without recalling the details, Mr. Yochem, do you recall generally that the—he was to trade work for the payment to you of the furniture?

A. That is something I don't remember in detail, the mechanics of how it was to work. I don't remember.

Q. But you did go there at his request, that is O. P. Carrillo's, to verify the fact that he was employed by them and they would stand behind the purchase of the furniture?

A. Well, yes.

Mr. Bottler: I believe that is duplicitous, Your Honor. I didn't catch all of the question but—can it be read back?

The Court: Duplicitous or repetitious?

Mr. Bottler: I believe both.

The Court: I think it is repetitious. He testified to it before. I suggest it will not be necessary to ask that question again.

Mr. Foreman: I am not arguing. I only wanted the Court—he said he didn't recall the details, and I was trying to ask the second question as to his general understanding, since he did not understand the details. That is why it was repeated by the defense in the two questions, without regarding the details, do you recall a general impression as to such. That was the only difference. It was the same question otherwise.

The Court: Would an impression be competent testimony?

Mr. Foreman: Your Honor, in view of the passage of time, it would be the best evidence if he could not recall the details. Yes, Your Honor, I think it would. At least it is my understanding, if you cannot recall the details—

The Court: Very well. You may test him on it.

Q. (By Mr. Foreman) What is your best recollection, Mr. Yochem, as to how—as to whether or not O. P. Car-

rillo was to pay for the furniture and services and the Benavides Independent School District was to make payments directly to you as a credit on his services?

A. Well, of course my primary interest was in selling the furniture, and I understood the furniture would be billed to and paid for by the Benavides Independent School District, and Mr. Carrillo would be doing work for the School District. As I say, the exact details I don't remember as to how he would be paid.

Q. That is sufficient. I will pass on.

With reference to the $159.40 worth of lounge furniture, to me a lounge is where you go get a beer or a cocktail. What is lounge furniture?

A. That is a manner of describing it in office furniture terms. It is reception furniture.

The Court: The Court will interpose a word here and say the word lounge has a much older meaning.

Mr. Foreman: In deference to the Court's advanced years, I will state to the Court I would like the witness to explain what he means so the jury won't get the idea—

The Court: That Mr. Carrillo is running a beer joint?

Mr. Foreman: Yes, sir.

The Court: I will permit you to explore it.

A. It was reception room furniture that you put out for reception, sitting in the offices of the School District.

Q. Do you know whether or not it was delivered there and is still in the offices of the Benavides Independent School District?

A. It was delivered there. I haven't been in the offices in some years. I assume it is still there.

Q. Do you recall a description of it as to the color or material of which it was built, whether of wood, chrome or what?

A. Tubular chrome furniture upholstered in a vinyl-type material of a brown color. I think there were two pieces of this furniture, and one matching table.

Q. All right, sir. Do you know the name of the other party, the man that was to be in O. P.'s office, if you heard it?

A. I don't believe that I did.

Q. Would Robert Ornales suggest any personality or the identity of a person to you?

A. No, I could identify the person as a young man that I understood had also just graduated from law school, if that is the same person.

Q. Do you recall who accompanied Mr. Carrillo, if anyone, upon his trip to your offices in Corpus Christi?

A. His sister, I believe, and a mutual friend.

Q. Who was that?

A. Ben McDonald.

Q. A lawyer in Corpus?

A. Yes, I believe he had known O. P. in school, if I am not mistaken.

Mr. Foreman: That is all, Your Honor.

7-1549 REDIRECT EXAMINATION

Q. (By Mr. Wilkey) At the time you had the conversation with O. P. and Oscar in the School District office in Benavides, was anyone introduced to you by either Oscar or O. P. as the president of the school board?

A. That I don't remember.

Q. Do you remember anyone being introduced to you as a member of the school board at that time?

A. Not definitely. I am not trying to be evasive. It is possible somebody could have been and I didn't know it at that particular time.

Q. And you do not now remember?

A. I don't definitely remember, no.

Q. Do you recall any discussion whatsoever about whether O. P. was going to pay the School District for the furniture?

A. As I stated, I understood he was doing work for the School District and that payment was to be arranged some way.

Q. Now, did—was there any understanding that you were to be paid over a period of time, or were you to be paid when your bills—

A. No, there was no discussion of how payments were to be made, and we simply rendered an invoice and the invoice was paid.

Mr. Bottler: No further questions.

Mr. Foreman: Nothing more.

The Court: You may step down, sir.

7-1550 J. W. ROACH,

a witness called in behalf of the Government herein, having been first duly sworn on oath, testified as follows, to-wit:

7-1550 DIRECT EXAMINATION

Q. (By Mr. Wilkey) Will you state your name, sir?

A. J. W. Roach.

Q. And where do you live, Mr. Roach?

A. I live at Alice, Texas.

Q. Where are you employed?

A. I am employed at the First State Bank of Alice, Texas.

Q. Where did you work before going to the First State Bank?

A. Immediately before that, I worked for the Texas State Bank of Alice.

Q. Are you in the same building or a different building from what you were when you were with the Texas State Bank?

A. The same building.

Q. All right. While with the Texas State Bank at Alice, what years did you work for them?

A. I began in the first of June of 1947 and I worked with them until they sold out in July of 1954.

Q. And what capacity were you with the Texas State Bank, the old bank?

A. I worked first as a note teller in the note department and later as an exchange teller.

Q. And what did you do as note teller?

A. I helped service the notes, that is, I took payments and recorded them on the notes. I posted the payments on the liability ledger sheets and, from time to time, I would write up notes upon instructions of the loan officers.

Q. And what did you do as exchange teller, your other capacity?

A. As exchange teller, I handled collections that came in for collection to the bank. I handled the payment, the making up of the transit payments and the—sold exchanges, that is casher checks and bank drafts, general exchange work.

Q. Who were the loan officers of the bank?

A. Mr. G. A. Parr, Tom Donald. Well, they were the loan officers in the bank.

Q. Who was president of the bank during the years 1947 until the middle of 1954?

A. Mr. George B. Parr was president.

Q. Was there such a thing as a loan committee?

A. Yes, there was a loan committee.

Q. What was the membership of the loan committee?

A. The loan committee was composed of Mr. George B. Parr, Mr. G. A. Parr, Tom Donald and Reed Nunley.

Q. Four members?

A. Yes, sir.

Q. What were the duties of the loan committee?

A. I never attended their meetings. I presume it was to pass on loan applications.

Q. Did you handle notes that were approved by this loan committee as note teller?

A. You mean in what capacity?

Q. Well, did you as note teller in handling collections of notes handle the notes that were approved by this loan committee?

A. Yes, I handled collections on all notes that we had in the bank.

Q. You didn't approve the loans, but they were approved by the committee, is that correct or not?

A. That is right.

Q. How often did this loan committee meet?

A. I believe their meetings were sometimes once, sometimes twice per week.

Q. And about what time of day did they meet?

A. As I recall, they had some meetings around 10:00

and 10:30 in the morning. I believe most of the time they met around 2:30, after the bank closed.

Mr. Foreman: Did I understand a while ago you said about twice a week?

The Witness: Yes, sir.

Q. (By Mr. Wilkey) At the present time, what are your duties with the First State Bank of Alice, the successor bank?

A. I am cashier, and as cashier I make loans.

Q. As cashier, are you the official custodian of certain records of the bank?

A. Yes, sir.

Q. Does the First State Bank have in its custody certain records of the old Texas State Bank of Alice?

A. Yes, it has.

Q. All right. I want to show you what has been identified here as Government's Exhibit 85-A and ask you if you have seen that before?

A. Yes, I have seen it.

Q. All right. I show you Government's Exhibit 85-A through 85-0000 and ask you what those are.

A. Those are deposit slips of the Benavides Independent School District in the Texas State Bank of Alice.

Q. All right, sir. For what period are they?

A. This period would all be for the year 1952.

Q. I show you what has been identified as Governmnet's Exhibit 86-A through 86-0000 and ask you what those are?

A. Those are deposit slips of the Benavides Independent School District in the various accounts, as they maintain them in the various accounts, of the Texas State Bank of Alice.

Q. For what year are they?

A. Those are for the year of 1953.

Q. I show you what has been identified as Government's Exhibit 87 and ask you what this is?

A. Those are photostat copies of some deposit slips that were made by the Benavides Independent School District in the Texas State Bank of Alice during the year 1953.

Q. All right, sir. I show you what has been identified as Government's Exhibit 88 and ask you what this is?

Mr. Foreman: Could I see 87, please?

A. Those are photostat copies of deposit slips covering deposits made by the Benavides Independent School District in the Texas State Bank of Alice during January and February of 1954.

Q. Are these exhibits here, 85, 86, 87 and 88, that is to say the originals of 87 and 88, are those deposit slips part of the official records of this bank?

A. Those original deposit slips are official records; those are photostat copies of the records.

Q. Of the official records, all right. Are those deposit slips, those records there, kept in the regular order of business?

A. Yes, sir.

Q. Correctly and currently kept?

A. Yes, sir.

Q. Now, then, what period of time do the deposit slips here on 85, being for the year 1952, do they represent? In other words, are they all or part of the deposit slips for the Benavides Independent School District for the year 1952?

A. It will take me a little bit to check that, sir.

Q. I think we might save a little time if I asked you how you secured those deposit slips from your file?

A. I took a list of the deposits as shown on the Recordak films of the various statements as carried by the Benavides Independent School Dstrict in the Texas State Bank.

Q. By statements, you mean the monthly statements of the Benavides Independent School District accounts?

A. That is right.

Q. And on those monthly statements, do items appear as deposits to the Benavides Independent School District accounts?

Mr. Foreman: If the purpose of these preliminary questions are to save time, we submit that seven or eight or ten questions will not save time in answering one. The witness is about a quarter through with his files here.

Mr. Wilkey: May I conduct my examination?

The Court: You may, sir.

Mr. Foreman: We will object to all of these questions as leading and suggestive, Your Honor.

The Court: Well, now, it is difficult for me to go back to the record and pass on objections to questions not currently made. I suggest you now ask your question, M. Wilkey.

Q. On the bank statements which are on the record, the Recordak film of the bank, what is shown in reference to deposits?

A. The record shows a picture of the statement sheet, and on that sheet deposits and checks are listed as to amounts and dates.

Mr. Foreman: May it please the Court, the Recordak film would be the best evidence of what it shows, and we submit that there has been no accounting for its absence and in the light and until it has been accounted for—I think it will be established it is there.

The Court: Objection sustained.

Q. Will you explain, Mr. Roach, in your own words, how you went about picking out the deposit slips for the year 1952 of the Benavides Independent School District from your bank files?

A. I made a list of the deposit slips as was shown on the Recordak film as to the amounts and dates, and from that record I went to the file where the original deposit slips were kept and pulled them from the permanent files of the Texas State Bank.

Q. And what are Exhibits 85-A through 85-0000?

A. They are the original deposit slips of the Benavides Independent School District in the Texas State Bank for the year 1952.

Q. Now, then, did you or not follow the same process in regard to the year 1953 in regard to looking at the bank statements?

A. Yes, sir, I did.

Q. What are Exhibits 86-A through 0000, and Exhibit 87 here?

A. 86-A comprises original deposit slips of the Benavides Independent School District in the Texas State Bank for the year 1953.

Exhibit 87 is made of photostat copies of some additional

deposit slips of the Benavides Independent School District in the Texas State Bank for 1953.

Q. Will you state whether or not Exhibit 86, the originals, plus photostats of certain other deposit slips, represent all of the deposit slips for the year 1953 as shown on the statements?

Mr. Foreman: I object to that, Your Honor, as duplicitous. There might have been some that were not shown on the statement film, therefore, he is asking if they are all of them and if they were the ones that appear on the statement form, and in the second place we object to the form of the question only as leading and suggestive.

The Court: Objection sustained.

Q. For the year 1953, what deposit slips did you find for the Benavides Independent School District in the Texas State Bank of Alice?

A. I am not sure I understand your question.

Q. I will repeat it. For the year 1953, what deposit slips for the Benavides Independent School District in the various accounts did you find in the Texas State Bank at Alice in the records?

A. Well, I found all of these listed as Exhibit 86-A.

Q. All right.

A. And I found these, the originals of which these are photostat copies shown in Exhibit 87.

Q. All right, sir. Now, then, I will ask you whether or not in reference to the months January and February of 1954 you followed the same process in looking up the deposit slips as in the previous years?

Mr. Foreman: Object to the form of the question as leading and suggestive.

The Court: Objection sustained.

Q. Tell us again how you went about finding the deposit slips for the year 1954 for January and February?

A. I took a list of the Recordak films as shown on the statements of the Benavides Independent School District.

Mr. Foreman: Again I object to that as hearsay, and the best evidence would be the Recordak films themselves.

Mr. Wilkey: Your Honor, he is just describing the process by which he located the deposit slips in his records. That is all. He is not attempting to testify as to the contents of the bank statements. He is just describing the process of searching the records.

Mr. Foreman: May it please the Court, he is testifying he looked at something that is not before the jury and made notes out of the presence and hearing of the defendants, and at a time when no counsel for the defendants were present and from what he found there that this is what his conclusion is.

The Court: Well, now, nothing is before the jury until it is qualified by testimony, and this witness is in the act and process of such qualification. I will permit it.

Mr. Foreman: Well—

Mr. Wilkey: Would you read back my question?

The Official Reporter (Reading): "Question: Tell us again how you went about finding the deposit slips for the year 1954 for January and February."

A. I took a list of the Recordak films as shown on the statements of the Benavides Independent School District.

Q. As I understand the Court's ruling, you may continue.

A. I looked at the Recordak films for the month of January and February, 1954, made a list of the deposit slips of the Benavides Independent School District in the Texas State Bank, and from that list I went to the permanent files and pulled out the original deposit slips.

Q. And what is Government's Exhibit 88?

A. It is a list of the photostat copies of these deposit slips.

Q. All right, thank you.

Mr. Wilkey: Your Honor, we offer in evidence at this time Government's Exhibits 85-A through 0000, 86-A through 0000, Government's Exhibits 87 and 88, as being the original bank records of the Texas State Bank of Alice.

Mr. Foreman: May we have him on voir dire to determine whether those are all of the records or not?

The Court: You may.

7-1561 VOIR DIRE EXAMINATION

Q. (By Mr. Foreman) Where is this Recordak film you used as a basis for searching through the old deposit slips filed to determine which you would extract and bring here as Government's Exhibits 86-A and 87?

A. They are in the files of the First State Bank of Alice.

Q. And are they in Alice?

A. Yes, sir.

Q. Then they would be available had you been subpoenaed to bring them, would they not?

A. Yes, sir.

Q. And who helped you, Mr. Roach, with reference to the compilation of such memoranda as you compiled before commencing your search so as to undertake to discover the originals of the deposit slips for these years 1952, 1953 and 1954?

A. Mrs. Mildred Daniel helped me in looking them up.

Q. And one of you would view and the other write down as you went through the viewer of the Recordak film?

A. That is correct.

Q. Then you would write down a given day and amount, would you not?

A. Yes, sir.

Q. Then you would go to that day and through the hundreds perhaps of deposit slips of various customers attempt to extract whatever slip and a given amount you were searching for, would you not?

A. Yes, sir.

Q. And you did not yourself do both the viewing and the writing down, did you?

A. Not on all of them.

Q. Then did you do most of the viewing or most of the writing down?

A. I did more writing than viewing. At times we would both view them if there was any question about the clearness of it.

Q. Then, if Mrs. Daniel perchance failed to note some number or date on the Recordak film, you would not have any way of taking it down unless you were also viewing at the same time, would you?

A. No, except we made one other check. We counted the number of the deposit slips. She would count the number of the deposits, and I would count the number I had recorded.

Q. Leaving that for a subsequent question, had she overlooked a given date in those hundreds of deposit slips, you would necessarily have overlooked that date in writing it down, would you not, sir?

A. That is correct.

Q. And likewise when you were checking and she was writing down, the same thing could have occurred, could it not, sir?

A. That is true.

Q. You would not, as you viewed, also write down to check what you wrote down and what she had written down too?

A. Not on all of them.

Q. And she did not either, did she?

A. No.

Q. And how many days did you devote to this task?

A. As I recall, it took us about three days, not full time but at different periods.

Q. And is it not true that each of these deposit slips were filed with some hundreds of others? Every customer who made a deposit credit for a given date was filed together, weren't they?

A. Yes, sir.

Q. That was in an unlocked file drawer or box, wasn't it?

A. Yes, sir.

Mr. Foreman: Perhaps my objection goes to the weight rather than admissibility. I have no objection to those being introduced for what they are, but as to those being the complete records—

The Court: You have no objection to the introduction of the photostats?

Mr. Foreman: Oh, no, sir, of the additional ones that he found, no, sir. We have no objection to the photostat and we have no objection to those. We only object to the conclusion that they are the complete list of such deposits.

The Court: Well, I think the examination has established that this work, as other work, is subject to human error, that it is done by humans, and I think that does go to the weight of the evidence, and Government's Exhibit 85-A through 0000, 86-A through 0000, 87 and 88—are not 87 and 88 also in multiples?

Mr. Wilkey: Yes, Your Honor, but they were first labeled by one number because they were stapled together.

The Court: Very well. They are all admitted in evidence.

Mr. Wilkey: Your Honor, in regard to the photostat nature of 87 and 88, there has been stipulated and filed with the Court that they are equal identities of what they are purported to be.

Mr. Foreman: All of which is unnecessary and we had not challenged them and I had agreed for them to be introduced.

The Court: Very well, sir. They are admitted in evidence.

7-1565 DIRECT EXAMINATION (CONTINUED)

Q. ((By Mr. Wilkey) Mr. Roach, in addition to microfilm records showing bank statements, do you also now keep in the bank down there microfilm of transit items and checks?

Mr. Foreman: Your Honor, as to what he keeps in a bank that he is now connected with which is not in this indictment is immaterial.

Mr. Wilkey: I will withdraw the question and rephrase it.

The Court: Very well.

Q. Mr. Roach, during the years 1949 to February, 1954, in addition to the microfilm showing the bank statements to customers, do you also keep another set of microfilm showing transit items, checks, et cetera?

A. The Texas State Bank maintained a set of microfilm covering those items.

Q. All right, sir. Were you asked to bring with you microfilm records of the Texas State Bank of Alice for the years 1949 to 1954 being checks drawn on the Benavides Independent School District account for the Texas State Bank of Alice.

Mr. Foreman: Just a minute, Mr. Roach. We object to the form of that question as calling for hearsay, as some purview of communication between the prosecutor and his witness out of the presence and hearing of these defendants and each of them as to—this objection has been heretofore made.

The Court: Ordinarily all that would be material is, did you bring them. What is the question?

Mr. Foreman: He has asked, "Were you asked to bring them," which is the same as, "Was a subpoena issued," which was the same question.

Mr. Wilkey: I just wanted to lay a logical predicate for the man having done what the testimony will show that he did. That is all. I think we have to start somewhere in an account of what the man did, and I preferred to start there.

The Court: I don't know what the testimony is going to be so I can't look into the future and anticipate what it is I am to rule on. As to the preesnt question, I think I must sustain it.

Q. Mr. Roach, did you ever made a search of the microfilm records of the Texas State Bank on which are photographed checks and transit items covering the period 1949 up until January 1, 1954?

A. Yes, I did.

Q. And what was the result of your search?

A. I was unable to locate them.

Q. Are there other microfilm showing checks and transit items there in the bank for different periods of time?

A. Yes, there are some there.

Q. And what periods of time do the microfilm which is there cover?

A. I didn't check the earliest date of the record, but there are some there before covering periods of time before 1949 and also come after December of 1953.

Q. All right. Are your records complete or incomplete in regard to microfilm from January, 1954, on?

A. I have never made this search, but I believe—

Mr. Foreman: We object to his conclusions, if he is unable to answer the question.

The Court: Objection sustained.

Q. Have you ever noted any microfilm missing from the bank records covering any period after January, 1954?

Mr. Foreman: Your Honor, it hasn't been established this man has anything to do with microfilm. He is asking a man down on one floor with the microfilm presumably kept, as far as this record reflects, on another and different floor and in another and different department. That calls for conclusion and hearsay until he has established there would be some reason for this man doing it. I object to the question as calling for hearsay.

The Court: I think he has testified he is in the bank and has made a search. I think the interrogation can continue on that premise subject to cross examination.

Mr. Wilkey: Will you read back the last question, Mrs. Wagner?

The Official Reporter (Reading): "Have you ever noted any microfilm missing from the bank records covering any period after January, 1954?

A. No, I haven't noted any missing.

Q. Under whose control and supervision are the microfilm records covering those checks kept?

A. They are filed in the vaults. They are under the general supervision of the officers of the bank.

Q. And under which officer's supervision?

A. I suppose that would be primarily my duty to supervise them.

Q. As cashier?

A. Yes.

Q. All right. When was the earliest time that the microfilm missing for the years 1949, 1950, 1951, 1952, and 1953, the fact that it was missing, came to your attention?

A. It was brought to my attention on February the 20th, 1954.

Q. Were you at that time, or had you occasion to look at the place where the microfilm records were kept?

A. No, sir, I had not.

Q. You had not at that time. Did you on a subsequent time?

A. Yes.

Q. And what did you see when you looked?

A. I was not able to locate any of them for that period of time.

Q. Were the cabinets missing, or was the microfilm missing or what did you see when you looked?

A. The drawer in which they were stored, as shown by labels on the drawer, were empty.

Mr. Wilkey: No further questions.

7-1570

CROSS EXAMINATION

Q. (By Mr. Foreman) Mr. Roach, is there any regulation, state regulation by the Banking Department, requiring the keeping of microfilm, to your knowledge?

Mr. Wilkey: Object to the question as immaterial. He infers and suggests. We are not attempting to show any other violation than is shown in this indictment.

Mr. Foreman: May it please the Court, he makes a great point of missing microfilm records as though there was some regulation or law authorizing the keeping of them. This man is an expert witness and he has asked him what his practice was as to the keeping of them, how complete they were. I think having gone into that, we ought to be permitted to establish the authority, the absence of any regulation, either a regulation by law or a regulation by the Banking Commissioner.

The Court: I think it is immaterial whether there is any particular law or regulation requiring the keeping of microfilm. What he is testifying to is that they did keep them and that some are missing, however, if you want to ask him whether there was such a law or regulation, I will permit the question, if the witness knows.

Q. Do you know of any regulation or any law that directs such must be kept, Mr. Roach?

A. I am sorry I cannot answer as to whether there is such a statute.

Q. All right, sir. Thank you. By statute you mean a regulation? Statute to a lawyer means an act of the legislation. By statute you mean either the Banking Commissioner or the legislature?

A. That is right.

Q. Now, Mr. Roach, when was the last time you had occasion to exercise any supervision over this present microfilm records of the bank with which you are now associated?

A. You mean personal supervision, I suppose?

Q. Yes, I surely do.

A. I can't answer the date, as to the date. Most of that authority is delegated to others who are working under me.

Q. As a matter of fact, you can't recall having done anything in that regard since you have been cashier of the bank, can you?

A. I have checked some records, already checked some film.

Q. With reference to someone in a conversation that came up that you wanted to satisfy yourself on?

A. Yes.

Q. That was on one occasion or more?

A. It was several occasions. Any time there is a question as to a customer's account that can't be determined otherwise, we go to the film.

Q. Yes, sir.

Is the safekeeping of them or direction as to those being kept as to in a locked or unlocked cabinet or vault, that comes under the supervision of what person in your bank to whom you have designated such authority?

A. Mrs. Daniel is directly responsible for the filing of these films.

Q. Because she is head of the bookkeeping department?

A. Yes.

Q. In other words, it is a bookkeeping function?

A. That is correct.

Q. Where is the bookkeeping department with reference to where you sit? Is it on the same or a different floor?

A. It is on the second floor directly over the floor on which I sit.

Q. And It was on the second floor all during 1949, 1950 and up until the time the Texas State Bank went into voluntary liquidation, wasn't it?

A. Yes, sir, it was.

Q. Can you tell us approximately how many—by the way, where does the Texas State Bank in liquidation maintain its files and records? Do they maintain them in the First State Bank of Alice, where you are cashier, or elsewhere in the City of Alice?

A. The records that they have in connection with liquidation are kept in their own office which is on the same street, but across the street from the present location.

Q. You are not associated or in any way connected with the Texas States Bank in liquidation, are you?

A. No, sir, I am not.

Q. How many accounts altogether do you estimate were carried by the Texas State Bank of Alice for all—first as to all customers to get an idea as to the volume of business you searched through for 85-A, 86 and 87?

A. I would estimate that the total number would be from 2500 to 3000.

Q. And with reference to the various accounts of the Benavides Independent School District, will you tell this jury whether there were some 13 or 14 such accounts?

A. The records show 14, I believe.

Q. And do you have a list of the various names of the accounts?

A. Yes, sir, I have.

Q. Will you read them off?

The Court: Gentlemen, I am going to declare a recess at this time for 30 minutes. The jury is excused for 30 minutes, and I will ask counsel to remain.

(The following proceedings were held out of the presence and hearing of the jury.)

The Court: I want to have a private conference with counsel in the case immediately in chambers.

(Short recess.)
(The following proceedings were had in the presence and hearing of the jury.)

The Court: Be seated, please. You will recall that before our 30-minute recess, a message was handed up to me at the Bench. I announce with sadness that the message was of the death of Mr. Sharpe's father. You will observe that Mr. Sharpe is not now at the counsel table, and this occurrence, this untimely occurrence, no one knows when death comes, will cause another delay in this trial. Mr. Sharpe is considered vital and essential to the defense, and I will not require the defendants to proceed in his absence, and naturally I will not require Mr. Sharpe to be here at the time of the death of his father. As I had previously announced, we had planned to work only four days this week, Monday, Tuesday, Wednesday and Thursday, and only two days next week, Monday and Tuesday. I am committed next week to go to the Fifth Circuit Judicial Conference in New Orleans, and at best we could have worked only two days next week. We will adjourn the balance of this week due to the death of Mr. Sharpe's father, and it has been agreed by counsel for both sides that instead of coming back for only two days that our adjournment will be until Monday, June 3rd, which will

be two weeks from today. I regret to have to interrupt the trial, but under the circumstances, I don't see how that can be avoided. However, it has been agreed that we will proceed this afternoon before our adjournment and we will proceed in the absence of Mr. Sharpe. That has been agreed by counsel. We will conclude the interrogation of the witness, J. W. Roach, and it is suggested Mr. Roach now be recalled and we proceed with his testimony.

J. W. ROACH,

being the witness who was on the stand at the time court recessed, resumed the stand at this time and continued his testimony as follows:

7-1576 CROSS EXAMINATION (CONTINUED)

Mr. Foreman: Shall I proceed?

The Court: Yes, sir, you may.

Q. Mr. Roach, you were about to read into the record the names of the 14 different Benavides Independent School District accounts.

A. All of these accounts or the names are preceded by Benavides Independent School District. The first one, Benavides Independent School District Bond and Coupon Paying Account. The second one is Building Fund, Series 1949. Building Fund, Series 1950. Building Fund No. 3. Interest and Sinking Fund. Local Maintenance B Fund. Local Maintenance. State and County Fund. Tax Collec-

tion Account. Veterans' Basic School Fund. Freer Building Fund No. 1. Freer Building Fund. Freer Local Maintenance. Freer State Available.

Q. Is that 14?

A. Yes, sir.

Q. Frequently here we find a note. Here is one on March 5, 1953, for $9,063. February 3, 1953, for 6500. Will you explain those deposit slips, please? What would be the occasion for a note?

A. Is that written in the lefthand margin?

A. No, sir. It just shows what the thing was deposited for. Note.

Mr. Bottler: What exhibit is that, please?

Mr. Foreman: This is 86-J, and I will call another one just to show the next. 86-K. A note for $5300, and it shows a deposit by Donald.

A. That would indicate that the school district borrowed money against a note and deposited in that account.

Q. Whose note and for what? I mean, who would sign such a note?

A. I don't know who would sign it.

Q. You were note teller, were you not?

A. I was.

Q. Here is 86-R, note $9,063.00.

A. I don't recall who signed the notes.

Q. All right, sir. Who would be the person that made out this deposit slip? It is 86-R, note $9,063.

A. I am not familiar with that signature.

Q. It is not yours?

A. No, sir.

Q. Well, is that a D. B.?

A. It doesn't appear to be a D. I am not sure what it is.

Q. I thought perhaps—I can't tell myself. Here is another one, 86-S, 3/5/53. Note $7,000, deposit by Donald. What Donald is that?

A. That would be B. F. Donald, Jr.

Q. That is the date over here?

A. Yes.

Q. It means he credited this account?

A. He took the deposit.

Q. I see. Then he would take deposits as well as the other tellers?

A. Yes, sir.

Q. Is this R for you?

A. No, that is Ray.

Q. I see. And that is 86-T. It shows transfer of $4,500. Tell the jury whether or not sometimes those notes ran as much as $100,000, Mr. Roach, that the district had to borrow or made notes to bring their account down to date, do you recall that, or more? Is there anything unusual about the Benavides Independent School District borrowing as much as $100,000 at a time before tax payments were coming in until the latter part or until the summer time?

A. I don't recall the amounts. I know they borrowed rather heavily at times.

Q. And when they did so, who signed the notes? Do you ever recall any of them? I don't mean those particular ones I asked you about, but isn't it true D. C. Chapa signed the notes?

A. I am sure he was a signer since he was an officer of the School District.

Q. There was one, 86-00 for $8,500, June 12, 1953?

A. Yes.

Q. An another note for $16,500, 86-PP?

A. Yes, that is right.

Q. And 7/15, a note for $10,000?

A. Yes, sir.

Q. By Donald. That is 86-XX, and then when the tax funds did come in in the fall, here is a note for $30,000, 86-EEE, isn't it?

A. Yes, sir.

Q. Deposited by Tom Donald. Isn't it true that almost every day there were banking transactions, deposits, or loans, on behalf of this customer, Mr. Roach, and I will first ask you, not with reference to the record, but from your recollection, how often did you see representatives of the Benavides Independent School District in the Texas State Bank of Alice, Texas?

A. I never tried to make a mental note of that, but it is quite frequent they would be in making transactions.

Q. On September 3rd, here is 86-M for $18,861.92?

A. Yes, sir.

Q. And the next day, or the same day, another note for $14,215.59?

A. Yes, sir.

Mr. Wilkey: September of what year, please?

Mr. Foreman: Fifty-three. 9/3/53.

Now, Mr. Roach, with reference to those adding machine slips attached to some of these checks, you have one here, do you not, for $115,141.82. That is the amount of that, isn't it?

A. Yes, sir.

Q. Showing two lists, doesn't it, one for that amount and another for $20,755.18, speaking of 86-PPP, 1953?

A. Yes, sir, that is correct.

Q. Now, can you tell from the type on that adding machine whether that is from the Texas State Bank of Alice or not? Are you familiar enough with it to be able to identify whether that tape was typed up at the Benavides Independent School District tax office or some other place than the bank or whether or not it was typed up at the bank?

A. I couldn't testify where that was made up.

Q. Neither one of them?

A. No, sir.

Q. That would go as to all of them?

A. Yes, I couldn't identify the type of those tapes.

Q. Yes. Here is a check, a deposit slip, that has no tape at all on it, and does it refer—speaking of 80-TTT. It doesn't have a list. It doesn't have checks itemized. All it says is "tax collections, $12,000," doesn't it?

A. That is all it says.

Q. It doesn't say whether that was deposits, notes, cash, or anything except that it is under checks down on a lower line, isn't it?

A. Yes, sir.

Q. It is under K. Well, is there such a teller?

A. Yes, that would be Vivien Klare.

Q. How do you spell Klare, K-l-a-r-e?

A. K-l-a-r-e.

Q. Who is Miss Vivien Klare? Was she teller or was she bookkeeper or stenographer? What was her function in the office?

A. She was a teller.

Q. What was her number, if you know?

A. No, sir, I don't know.

Q. Do you know how long she worked, or in what cage, if one particular cage she worked?

A. I don't recall when she became a teller. She worked as a bookkeeper for several years before they transferred her down to the teller's cage.

Q. Is she a teller now?

A. Yes, and she hasn't always worked the same cage. I am not sure what her number was.

Q. Isn't it true from time to time you would train the bookkeepers by letting them act temporarily either during lunch hour or a day or two in the absence of a teller so as to give them training and keep from bringing in a stranger?

A. It wasn't done so much in the absence of a regular teller, but they would come and work in the cage of a regular teller under the teller's supervision until they learned the operation.

Q. Who is your present chief bookkeeper? What is her name?

A. Mrs. Daniel.

Q. Did Mrs. Daniel not act as extra teller from the bookkeeping department relieving people at noon and sometimes on vacation while she was bookkeeper and before she became chief bookkeeper?

A. I don't recall that she ever did.

Q. Do you recall she did not?

A. No.

Q. Do you know who Miss Vivien Klare, who filled out 86-TTT—did you know Miss Klare likewise filled in some days as teller when she was working there in the bookkeeping department?

A. I couldn't tell you that.

Q. Either way?

A. No, sir.

Q. All right. By the way, here is another one of those, 86-JJJJ, 11/2/53. It doesn't have a slip at all on it, does it?

A. No, there is no slip.

Q. Is there also Vivien Klare?

A. Yes, sir.

Q. And it just shows $18,000 deposited as tax collections, doesn't it, without identifying a single one?

A. That is all that is written on the slip, tax collections.

Q. Now, we have 10/1/53, Exhibit 86-LLLL. I believe you have identified this as Miss Ray's haven't you?

A. Yes.

Q. It likewise has no slips of any kind on it, does it? It has only tax collections, $17,000, doesn't it, without showing how many checks or what the amounts of the individual checks were, or anything else?

A. That says "tax c-o-l-l."

Q. Well, perhaps I am wrong in saying collections. Would tax c-o-l-l mean something else?

A. It could.

Q. Did it mean collection, or what else do you suggest?

A. It could be tax collector, indicating a transfer from the tax collector's account, from that account.

Q. But you don't know whether that is true or not?

A. I don't know.

Q. Likewise this one by Miss Klare on 11/2/53, tax coll, $16,500?

A. Yes, sir.

Q. What was your usual practice when a check was written on your bank itself? I don't believe, though, you were a teller in 1951, '52, or '53, were you? You were always a note teller, were you not?

A. That is right.

Q. And you wouldn't be able to tell us with reference to the practice of or would you, as to—do you know the system or practice when a check would be written on you? How would it show, normally, on a deposit slip made out by a teller, that it was a check on the bank itself? That is, the Texas State Bank of Alice?

A. It might not show it all, just by listing on an adding machine tape.

Q. In other words, if this were a check, and only one check deposited in a given account, if your teller filled out a deposit slip, it would be your practice to have the—an adding machine tape pinned to the deposit slip?

A. If there were more than one item, as a rule.

Q. And that even with you all making up that slip, it would not show the bank it was on or the person signing it?

A. No.

Q. I see. Was it or not a usual and customary practice in 1952 and '3, simply to show a list of items on an adding machine tape without indicating on what bank they were drawn or either even what they were other than as adding machine amounts?

A. Yes, that was done. That is done in general. If an adding machine tape accompanies a deposit, it doesn't list the individual items as to the banks on which they are drawn or the drawee or drawer.

Q. Isn't it true, Mr. Roach, that it is contrary to the policy of the, or was contrary, of the policy of the Texas

State Bank of Alice to change or alter a deposit slip made out in advance by a customer if the total amount shown was correct regardless of whether it was located at different places on the slip?

A. The total was not changed.

Q. I understand, and if the total was correct, that is all that was necessary to keep the bank's books in balance?

A. That is correct.

Q. And isn't it true that if there were cash received with the deposit, even though the greater bulk of the deposit might be checks, and if the cash and checks all were listed under checks that all that would be necessary for the teller to keep his and, thereafter, the bank's books in balance would be to make out a cash ticket showing the receipt of the cash?

A. That would balance the deposit.

Q. And it would not be a part of the practice of the bank to return duplicates of that cash ticket to the depositor, but only to send the two cash tickets to the bookkeeping department; is that correct?

A. Any cash taken in by a teller has that cash ticket made out in duplicate, one copy retained by the teller and the other copy sent to the proof department.

Q. Isn't it true frequently depositors—

Mr. Wilkey: Mr. Foreman, would you step aside?

Mr. Foreman: I am sorry, as Diogenes said to Alexander the Great.

Mr. Roach, isn't it true that many depositors start their deposits, irrespective of the printing on the check, where we have here currency, silver and checks, that some will start with checks here where it says currency and some start currency down where it says checks, isn't that true, as a whole of the depositors at large?

A. I don't know that I could testify it is true in general, but it is done. It has been done by some customers.

Q. Then the mere location of a deposit slip either under currency or under checks would not of itself signify anything except that that person had a total amount? The total is all you were aiming at, whether checks or cash, isn't that true?

A. Yes, that is true.

Q. This is a hypothetical question. Just suppose that instead of using an adding machine slip, the depositor used, say, a series of these printed forms and on down here indiscriminately putting both checks and cash or putting cash and silver under checks in the first column under checks, and then a series of total amounts and presented that deposit, and in running up the adding machine the teller determined that while they had them all shown as checks, that a part of it was cash, wouldn't he okay the deposit slip, make out a cash ticket, and give a duplicate to the customer just as the customer had made it out?

Mr. Wilkey: Your Honor, we object to that as calling for conclusions based on so many assumptions that are not in evidence. I don't see that the answer would have any value one way or the other. It is confusing and takes into—takes in the assumption—takes in assumptions that are not in evidence and relates to—it is not certain to whom it relates or what period of time.

Mr. Foreman: May I determine whether he is confused or not?

The Court: You may.

Q. Are you confused, Mr. Roach? Have I bumfuzzled you by that question?

A. I don't think so.

Q. You understand my question?

A. I think so.

Q. Can you answer it?

The Court: If the witness can understand the question, I will permit him to answer it.

A. Now, I could not answer for all individual tellers. Some tellers might refuse to take the deposit with cash in it if it were not listed as such on the deposit slip. It would be within their individual discretion to do so.

Q. All right. That is about as sensible an answer as I could ask for.

Mr. Wilkey: Your Honor, we object to these uncalled for comments of counsel.

The Court: Yes, I instruct the jury not to consider the comments of counsel.

Mr. Foreman: I am sorry.

The loan committee met twice a week, sometimes at 10:30 and sometimes at 2:00, but will you tell us for how long it would normally meet?

A. I couldn't—I don't know how long the afternoon session lasted, because I usually would leave the bank while they were still in session. The morning meetings, possibly an hour and a half at times. It varied.

Q. Sometimes it didn't last even a half hour?

A. I am sure some of them were shorter than that.

Q. Mr. Roach, except for the loan committee meetings maybe twice a week for 30 minutes or more or less each time—

Mr. Wilkey: Your Honor, that wasn't his testimony. Counsel is distorting his testimony. He said it varied from 30 minutes to an hour and a half, and sometimes more or less.

Mr. Foreman: Will you read back the question and see if that isn't what I said, incorporating Mr. Wilkey's objections?

The Official Reporter (Reading): "Question: Mr. Roach, except for the loan committee meetings maybe twice a week for 30 minutes or more or less each time—"

The Court: Rephrase your question.

Q. Except for the bi-weekly loan committee meetings for however long they lasted, how often did you see the defendant, George B. Parr, at the Texas State Bank in Alice? Isn't that true that is about the only thing that ever brought him there?

A. He was there seldom at other times. He was there on a few occasions when there wasn't a loan meeting, but it wasn't very often.

Q. Where did Mr. George B. Parr normally stay, or do you know?

A. I don't know. To my understanding, he stayed at his office in San Diego.

Q. He had other businesses, did he not, in San Diego and Alice, that is, his automobile agency, a ranch, oil drilling, and farms?

A. It was my understanding that he did, yes, sir.

Q. As a matter of fact, he was a very busy man in that whole area in various businesses, wasn't he?

A. Yes, sir.

Q. Who was the active actual executive officer who did run the bank and was responsible for running it?

A. Mr. G. A. Parr was the executive officer in the bank.

Q. That is Gibbons A. Parr?

A. Yes, sir.

Q. He is not here as a defendant? You don't see him in the courtroom, do you?

A. No, sir.

Q. What relation is he to George B. Parr?

A. They are brothers.

Q. Older or younger than George B. Parr?

A. He is older.

Q. Mr. Gibbons Parr is not as active in politics, is he, sir?

A. You say he is not active in politics? Is that the question?

Q. Is he or not active in politics?

A. Not to my knowledge.

Q. Now, please, Mr. Roach, the next question would have to do with the arrangement of the teller's cages and the floor plan of the Texas State Bank of Alice, and I would believe it would be more worthwhile to us if you would be willing to undertake to do it rather than for me to ask maybe 40 or 50 questions. If you would just lay it out for us, using maybe one of these (indicating) as a straight edge and showing us how the cages face, how many there were, whether the vault was, where Mr. Gibbons A. Parr sat, and where Mr. Donald's office was, as best you can. Would you mind doing that, please, sir?

I don't expect it to be an engineering feat. As a part of the question, please Mr. Roach, I have reference to the bank as it existed in 1949, 1950 and 1951. When was it altered and enlarged, 1954?

A. No, it was before that. I don't recall the year.

Q. Well, if you will call this—

A. You want the old floor plan?

Q. Yes, sir.

The Court: Mr. Roach, could you do better if you were seated at a table?

The Witness: I think I am going to do all right, Judge, thank you.

(Short interval)

I believe I have it, Mr. Foreman.

Q. Have you the directions that the bank faces, north, east, south or west indicated? It is easier for me to put north at the top, and that is the north, isn't it?

A. That is right.

Q. Then, for the record, the bank faces, or rather the narrow edge of the bank—which is the front of the bank, Wright Street or Main Street?

A. Wright.

Q. It faces south on Main and runs with an opening on Wright? Is there an opening on Wright Street?

A. Yes, sir, right here.

Q. The rear opening at the top or north is on Wright Street and we enter from this place left open here. The first door in the back is Gibbons-A. Parr's desk?

A. Yes.

Q. And these cages are consecutively numbered 1, 2 and 3 and the last one exchange?

A. Yes, sir.

Q. Does exchange also mean note teller in your bank?

A. It did at that time. They were both at the same window.

Q. Now, when tellers in 1, 2 and 3 would go off to lunch normally—

A. Let me see now. Maybe I had better change that—before that was divided up—yes. Let me change that. The notes were in this window and the exchange in here.

Q. Is this office of Mr. Donald, was it in front of the teller's cages and opening both into the rear?

A. This is the vestibule. The opening into here and then it opened into this hallway.

Q. Suppose we write vestibule along here. That is for the public generally?

A. Yes.

Q. People would stand in the vestibule when doing business in the bank with the tellers in cages 1, 2 and 3 or the note teller, wouldn't they?

A. Yes.

Q. Thank you, sir. And this was the end of the bank. How wide across was the bank from east to west, Mr. Roach?

A. I believe 25 feet.

Q. And how far was it from Main Street down Wright, or, rather, from south to north?

A. I can't say definitely. I would judge 75 or 80 feet.

Q. Either I misled you or we have two No. 2's and no No. 3. Is that correct, or am I wrong?

A. I am sorry. This is No. 3.

Q. They are numbered then—the bank numbers them from the front?

A. Yes.

Q. And what do you call this working space back here, back of the teller's cages and north of Mr. Parr's desk in front of the vault, from between Parr and the vault on this picture?

A. There was a secretary's desk in here and also the note posting machine, just general walking area.

Q. Just general walking area?

A. Yes, sir.

(Document tendered to the Clerk and marked Defendants' Exhibit No. 206.)

Mr. Foreman: We offer this.

Mr. Wilkey: The Government joins in the offer, Your Honor.

Mr. Foreman: That is all from the witness, Your Honor.

The Court: What is the number, please?

The Clerk: Defendants' Exhibit 206.

The Court: Defendants' Exhibit 206 is admitted in evidence.

7-1596 REDIRECT EXAMINATION

Q. (By Mr. Wilkey) Mr. Roach, in regard to Mr. Donald's office space, what kind of walls did it have?

A. There was a wooden panel around part of the way and the glass. I think the panel was probably about four-foot high and glass paneling above it.

Q. How far up did the glass panel go?

A. Probably about five and a half feet to it from the floor, including the wood panel. I am not sure about it exactly.

Q. It wasn't fully enclosed up to the ceiling?

A. No, sir.

Q. And in what city did Mr. Gibbons Parr live?

A. He lived in Alice. At the time he worked in the bank, you mean?

Q. Forty-nine to '53?

A. He lived in Alice.

Q. And did Mr. Gibbons Parr ever countersign any checks on the Benavides Independent School District?

A. I don't know.

Q. Did you ever see any countersigned by Mr. Gibbons Parr?

A. I don't recall that I did.

Q. Do you know whether or not Mr. Gibbons Parr ever made any recommendation on personnel of the Benavides Independent School District to the Benavides Independent School District board?

A. I don't know about that.

Q. Do you know whether Mr. Gibbons Parr attended Benavides Independent School District board meetings regularly?

A. No, sir, I do not know.

Mr. Wilkey: All right.

Mr. Foreman: Your Honor, if that is intended as an inference or suggestion that George Parr did, we object and except because the records in this case, and the only records of the school board meetings is Richard Barton's

testimony, who said he attended approximately once or twice a year, and as far as this record is concerned, this recommendation, if intended as a suggestion or inference, the same Richard Barton testified he made no more recommendations than any other taxpayer in the Benavides Independent School District, therefore we object to the implied inference in the question.

Mr. Wilkey: Your Honor, we asked that merely to establish if the witness knew the lack of communication between Mr. Gibbons Parr and the Benavides Independent School District. That is all.

The Court: What is the materiality of it?

Mr. Wilkey: He had asked in reference to Mr. Gibbons Parr's activities, and I attempted to establish they were limited as far as any relevancy in this case to the Texas State Bank.

The Court: Objection overruled.

Q. As to Exhibit 86-TTT about which Mr. Foreman asked you, being a slip dated 1953, November 2nd, the item of $12,000, can you tell us by this whether or not this represents a transfer to the Benavides Independent School District Local Maintenance Fund from the tax collector's account in the Texas State Bank or not?

A. I couldn't tell from the deposit slip. It is not noted on it. I just don't know.

Q. To your knowledge, was the practice followed of transferring funds from the tax collector's account in the bank there to the other accounts of the Benavides Independent School District?

A. Yes, that is the only way they get into the other accounts is from his account.

Q. Then all original deposits—is this correct or not, that all original deposits would be made into the tax collector's account?

Mr. Foreman: We object to that as leading and suggestive. The form of the question only. We do not object to the testimony.

The Court: Objection sustained.

Q. Into what account or accounts of the 14 Benavides Independent School District accounts were the original deposits made?

A. Now, an original deposit is one that is made for the first time in an account in the bank.

Q. Let me explain what I mean by original deposit. I mean a deposit coming into the bank from an outside source as contrasted from a transfer from another account in the bank.

A. Now, the exhibits there show some deposits from notes, as you recall?

Q. Yes.

A. Those are original deposits. Other original deposits into those various accounts would normally come from a transfer from the tax collector's account.

Q. I see. Now, then, the tax collections themselves represented by taxpayers' checks, into what account or accounts would they be originally deposited in the Texas State Bank?

A. They would go into the tax collector's account.

Q. I see. All right. Thank you.

A. With this exception, sir. Checks coming to the Texas State Bank from the Texas Educational Agency would come directly into the funds for which they were specified,

into that account, either state available fund or such account as is indicated on the check on the Texas Educational Agency.

Q. All right, sir. Then I will show you Exhibit 86-JJJJ being the 1953 deposit to the Bond and Coupon Paying Account, November 2, 1953, a notation down here as tax coll. Eighteen thousand. Can you tell from that whether or not that is a transfer from the tax collector's account into the Bond and Coupon Paying Account?

A. From the notation on the deposit slip, I couldn't tell as to the source of that $18,000. I didn't take the deposit, and my testimony would be only as regards the usual procedure.

Q. All right, thank you. Now, you referred here a minute ago to payments made from state available funds to the School District accounts. I show you what has been identified as Government's Exhibits 150-A, B, C, et cetera, and ask you if those photostats are photostats of those payments to which you refer?

Mr. Foreman: I have no objection as to asking that question, but this is a part of the work Mr. Sharpe was keeping up with and before they are offered, I would like to have the benefit of conferring with him. I haven't tried to keep up with the exhibits. I have no objection to identifying them, but I do object to their being offered in evidence.

The Court: Very well. I will allow the testimoney.

Q. You may answer.

A. Do you want me to answer in regard to all of them?

Q. Yes. Will you?

A. Those are photostat copies of the voucher from the

state comptroller. The State Comptroller of Public Accounts of Austin, covering payments of funds to the Benavides Independent School District. Those vouchers do not indicate which acoounts this money went into. There was a card that accompanied the voucher that indicated whether it was state available money or whether it was educational foundation money or for transportation, and those cards would tell the bank which accounts the money would be deposited in.

Q. Irrespective of whether or not those photostats of the checks themselves showed to which account they should be credited, are they payments from the state to which you had reference to in your previous testimony?

A. Yes, they are.

Mr. Wilkey: Thank you. No further questions.

Mr. Foreman: No further questions. Thank you, Mr. Roach.

The Court: The jury is reminded of the instructions previously given, and as announced earlier, we will adjourn the trial of this case until two weeks from today, Monday, June 3, 1957, at 9:30 a.m.

There may be some questions some members of the jury may want to ask, and if so I suggest they be asked now and not privately. I mention that for the reason that the question a juror may ask may be something others may be interested in and if so I will hear them now.

If there are no questions, the trial is adjourned until Monday, June 3, 1957, at 9:30 a.m., and the jury is reminded of the instructions previously given.

Let me say to the jury, your checks for your one day's service today will be mailed out to you tomorrow, and you should have them on Wednesday.

Thank you, gentlemen.

MORNING SESSION—JUNE 3, 1957

The Court: Are we ready to resume the trial of The United States vs George B. Parr, et al?

Mr. Wilkey: Yes, Your Honor.

Mr. Foreman: Yes, Your Honor.

The Court: Very well. The Government may call its next witness.

Mr. Wilkey: The Government calls Reed Nunley.

7-1603 REED NUNLEY,

a witness called in behalf of the Government herein, having been first duly sworn on oath testified as follows, towit:

7-1603 DIRECT EXAMINATION

Q. (By Mr. Wilkey) Will you state your name, sir?
A. Reed Nunley.
Q. And where do you live, Mr. Nunley?
A. Alice, Texas.
Q. How long have you lived there?
A. About 28 years.

Q. Were you ever employed by the Texas State Bank at Alice?

A. Yes, sir.

Q. And during what period of time?

A. From the latter part of 1938 until July of 1954.

Q. And in that time from 1938 until July of 1954, in what capacity did you serve?

A. Well, I started out as bookkeeper, and very shortly after that, I started working with the notes. I was called a note teller.

Q. And in the years 1949, 1950, 1951 and 1952 and 1953, and until you left in July of 1954, what jobs did you hold during that period of time?

A. As I said a while ago, I was note teller and, of course, I made some loans in the bank and served on the loan committee, and took care of the records concerning our loans, the credit information.

Q. What was Tom Donald's job in the bank?

A. Mr. Donald was cashier.

A. As cashier, what was he in charge of?

A. Well, he did the hiring and firing, yes, sir. also a loan officer at the bank.

Q. And in charge of personnel, what did he have to do with regard to the hiring and firing?

A. Well, he did he hiring and firing, yes, sir.

Q. In reference to the loan committee that you referred to in connection with your own work as note teller, who was on the loan committee?

A. Well, there were four of us: Mr. George Parr, Mr. Gibbons Parr, Mr. Donald, and myself.

Q. All right, sir. Now, what did this committee of four, the loan committee, do?

A. Well, we considered applications for loans and passed on them. It was necessary that we consider loans and approve them or disapprove them.

Q. And how often did this loan committee meet?

A. Well, when they first set up, we were meeting twice a week. We were actually, by agreement, supposed to meet about twice a week, but sometimes only once a week.

Q. Who ran the loan committee?

Mr. Foreman: Just a minute. May it please the Court, we object to that as calling for a conclusion, that somebody ran the loan committee.

The Court: Objection sustained.

Mr. Wilkey: I will rephrase it, Your Honor.

The Court: Very well.

Q. (By Mr. Wilkey) Who presided at loan committee meetings?

A. Mr. George Parr.

Q. What was the degree of attendance of Mr. George Parr at these loan committee meetings? That is, was he sometimes there, usually there, always there, or what was his degree of attendance?

A. He was usually there. He was pretty regular.

Q. If Mr. George Parr were absent, what would be the procedure of the committee with regard to any loans which were referred to it?

A. Well, if it was a real large loan, we would rarely ever act on it on our own without the full committee there. If it was for a reasonable amount, the committee, the three of us, or sometimes maybe just two of us, we

would go ahead and act on it if in our opinion we thought it was a loan that would be passed by the committee.

Q. Now, then, on these loans which were acted on by the other members in the absence of Mr. George Parr, what was the practice, if any, with reference to those at the next regular meeting when Mr. George Parr was present?

A. Well, as a matter of practice, we would bring those applications before the committee and they would be discussed and we would usually say we have made this loan, and show our basis for making the loan, and it would usually be approved.

Q. At the next meeting at which Mr. George Parr was present?

A. Yes, sir.

Q. All right. Do you know a Mr. Diego Heras?

A. Yes, sir.

Q. Did you ever see him in the bank?

A. Yes, sir.

Q. In the bank there, where did you usually see him?

A. Well, in the lobby I guess you would say.

Q. All right. Did he have any—was there any particular person in the bank with whom Mr. Diego Heras usually dealt on his trips to the bank?

A. He has dealt with me sometimes there because Mr. Heras has borrowed money there at the bank, and during part of that time I was actually working in the note window, you know, receiving payments on notes, and he has been to see me.

Q. Did you ever see him deal with anybody else in the bank?

A. Yes, sir, he has dealt with Mr. Donald.

Q. Did you ever see him there in Mr. Donald's office or at his desk?

A. I have seen him go into his office, yes.

Q. After Mr. Heras went into Mr. Tom Donald's office, what next occurred, if anything, to your knowledge?

A. Well, I don't know what occurred in the office.

Mr. Foreman: May it please the Court, we object to the form, the insinuation, the suggestion of that question. I have no objection to anything he ever saw, but he is assuming the same thing happened each time, for the purpose of the testimony. The witness hasn't so testified. We ask the interrogation be made with regard to relevant facts, rather than insinuation and suggestion.

The Court: Objection sustained.

Q. (By Mr. Wilkey) To rephrase the question, after Mr. Heras would go into Mr. Tom Donald's office, and I understand you were not present and could not see what went on in there, did anything else—what would occur following that?

Mr. Foreman: We ask that he fix the time, the date, and the occasion unless the witness has first testified the same thing invariably occurred.

The Court: It is so suggested.

Mr. Wilkey: I am asking Mr. Nunley during the years 1949, 1950 and the first half of 1951.

Mr. Foreman: We renew our objection, Your Honor, that that calls for and suggests something to which the witness has not testified, that the same thing occurred throughout three years in each visit to the office, and

that has not occurred except in the insinuation in the question.

Mr. Wilkey: I can only ask one question at a time, and I have gone this route to get at it in order not to be leading.

The Court: I think the objection is good. It hasn't been shown there is any routine or procedure.

Mr. Wilkey: That is what I am getting at, whether anything occurred. I am not suggesting anything. I am waiting for the witness to answer.

Mr. Foreman: The question itself, may it please the Court, suggests that something occurred. He says during those three years what occurred when he would go in the office. The witness hasn't said. Sometime one thing might occur and another time another thing might occur.

Mr. Wilkey: I don't think we will know until the witness answers the question.

The Court: I will hear the witness testify on the subject. The objection is overruled.

Q. (By Mr. Wilkey) Tell us what next you would see, if you saw anything, in regard to the action of either Mr. Heras or Mr. Donald, after Mr. Heras would go in Mr. Tom Donald's little office?

A. I have seen Mr. Donald leave his office after Mr. Heras has gone in there.

Q. Leave his office before Mr. Heras did?

A. Yes, sir.

Q. On those occasions you observed when Mr. Donald left his office before Mr. Heras left, did you observe where Mr. Donald went?

A. Well, he would come back in the working area or behind the tellers' cages.

Q. Behind the tellers' cages?

A. Yes, sir.

Q. And after he went into the working area there behind the tellers' cages, did you observe where he next went?

A. He would go into a teller's window. There was a very small area there. He would either go in there or another office up front of the bank.

Q. After he left the tellers' cages, where would he go, if you observed?

A. He would go back to his office.

Q. He would go back to his office?

A. Yes, sir.

Q. When Mr. Donald would go back to his office, would Mr. Heras still be in Mr. Donald's office at that time?

A. As I recall, he would be, yes.

Q. Over what period of time would you see Mr. Diego Heras in the Texas State Bank there?

A. Well, it was probably about a couple of years, or say 1950 or 1951, something like that.

Q. All right, sir. Can you recall when it was that you didn't see Mr. Heras in the bank there?

A. Well, as I recall it, the reason I said '50 and '51, I think it was at the end of '51 when we finished remodeling our bank. In other words, we doubled the floor area and of course I don't recall seeing him in there after that time.

Q. Then the time that you saw Mr. Heras in there

was for about two years prior to the completion of the remodeling of the bank?

A. Yes, sir.

Q. That was completed in 1951?

A. Yes, as I recall, the latter part of the year.

Q. Do you know Mr. Oscar Carrillo?

A. Yes, sir.

Q. Well, did you ever see him in the bank prior to the time it was remodeled?

A. Yes, sir.

Q. And after it was remodeled in 1951, did you ever see Mr. Oscar Carrillo in the bank?

A. Yes.

Q. Did you see him in the bank about the same, or more, or less after it was remodeled in 1951?

A. Well, I believe he was in there more often after it was remodeled.

Q. After 1951?

A. Yes, sir.

Q. Did you ever see Mr. Oscar Carrillo go in Mr. Tom Donald's office or to his desk after the remodeling took place?

A. Yes, sir, after the remodeling, and I have seen him go back to Mr. Donald's desk there.

Q. After the remodeling took place, did Mr. Donald have a semiprivate office or a desk out in the open?

A. No, sir, it was out in an open area there.

Q. Is that where you saw Mr. Oscar Carrillo?

A. Yes.

Q. Turning your attention to the week of February 15, 1954, did you hold a loan committee meeting in the bank during that week?

A. Yes, sir.

Q. Was it in the morning or afternoon?

Mr. Foreman: 1954, the week of what month?

Mr. Wilkey: February 15, 1954.

Q. (By Mr. Wilkey) Was it held in the morning or the afternoon?

A. It was held in the afternoon.

Q. And who was present?

A. I believe all four of us were present at that meeting.

Q. Was Mr. George Parr there?

A. Yes, sir.

Q. Do you recall about what time of the afternoon the loan committee meeting broke up?

A. As I recall, it was around five o'clock. It was in the later part of the afternoon.

Q. Do you recall the day of the week and the date that this committee meeting was held?

A. It was on a Thursday, I believe the 18th.

Q. Thursday, the 18th of February?

A. Yes, sir.

Q. Did you ever examine the file drawers where the bank microfilm was kept to see whether or not it was present?

A. Yes, sir.

Q. Do you know on what date you did that?

A. That was on Saturday following that loan committee meeting.

Q. And if Thursday was the 18th, then Saturday would be—

A. The 20th.

Q. All right. Could you fix the approximate date or time you first heard of the bank microfilm being missing?

A. It was sometime after that loan committee meeting. I don't recall whether it was the next morning—I believe it was the next morning. I'm not sure about that, but it was after that Thursday.

Q. Sometime between late in the afternoon of Thursday the 18th and the morning of the 20th when you saw that it was missing, sometime in there you first heard about it?

A. Yes, sir.

Q. At that loan committee meeting Thursday the 18th, did you hear anything said about any microfilm being missing?

A. No, sir.

Mr. Foreman: May it please the Court, I object to that as leading and suggestive in the negative form as to whatever he heard in the presence of Mr. Donald and Mr. Parr. We object to the insinuation and suggestive form of the question. It is argumentative and the ultimate fact of what was said would be all the prosecution can inquire about.

Mr. Wilkey: I believe that is all I did inquire about, but I will rephrase.

The Court: I believe the objection as to the negative nature as to what didn't happen would be good. As to did you hear anything, so-and so, the witness said no, sir. I will sustain the objection and I will instruct the jury not to consider the answer or question. If you wish to rephrase and ask another question, you may.

Q. (By Mr. Wilkey) At that loan committee meeting, Mr. Nunley, did Mr. George Parr or Mr. Gibbons Parr in the presence of George Parr and Tom Donald, or Tom

Donald say anything about any of the records of the bank being missing.

Mr. Foreman: We have no objection to anything that may have been said or anything that was not said as to the defendants, but as to the other defendants we object and ask that the testimony be limited as to the defendants present.

Mr. Wilkey: We will offer it against George Parr, the president of the bank, and Tom Donald, cashier of the bank, who was there, and the Texas State Bank of Alice as to this question.

The Court: Very well. The jury is instructed the question of the conversation in the loan committee meeting of February 18, 1954 will be—concerning conversations with George Parr and Tom Donald, will be admissible only as to the case insofar as it pertains to the Defendant George B. Parr and B. F. (Tom) Donald, and the First State Bank of Alice, and will be not admissible and will not be considered by you insofar as it pertains to the case against the other defendants.

Q. (By Mr. Wilkey) You may answer, sir.

A. No, sir, I didn't hear them discuss it.

Q. Now, with reference to Mr. Gibbons Parr, what was the degree of his function and operation there in the bank in the years 1953 and as compared—in the years 1953 and 1952, shall we say, as compared with preceding years, if there was any difference, the same, or more or less?

A. Well, Mr. Gibbons Parr wasn't as active the last two or three years he was in the bank.

Q. Do you know the reason for that, sir?

A. Well, I don't know whether his health wasn't good, or what. He just seemed—he didn't seem to be as active as he used to be. He spent more time on his outside interests, you see.

Mr. Wilkey: All right. No further questions.

7-1616 CROSS EXAMINATION

Q. (By Mr. Foreman) Who was the executive officer of the bank, Mr. Nunley?

A. Mr. George Parr was the president but the active officer—is that the question?

Q. The executive officer, the one in charge who was responsible for the over-all running of the bank?

A. Mr. Gibbons Parr was the executive vice president.

Q. He had a desk in the office in the bank?

A. Yes.

Q. Both before and after the remodeling?

A. Yes, sir.

Q. Did he usually stay there? I was talking to the bailiff a minute here, and I missed one of the answers here and I wanted to clear it up.

Was Gibbons Parr there most of the time the bank was open?

A. He would be there until the last two or three years the bank was in existence. He was less active then, Mr. Foreman.

Q. You mean by that he spent less time in the bank?

A. Yes.

Q. How much of the time did he spend?

A. That would be pretty hard to estimate. I would

say probably on the average of about half of his time, half the banking hours.

Q. As to him and George B. Parr, which one spent the most time at the bank?

A. Mr. Gibbons Parr.

Q. Was George Parr ever there as a regular place of employment, or was he only there at loan meetings?

A. No, he wasn't there as a regular place of employment, just the loan meetings and board meetings.

Q. Did you attend the board meetings?

A. No, sir.

Q. How often were they held?

A. I don't recall, Mr. Foreman. There was a statute they had to meet so often, and I am not familiar on that, how often they met.

Q. As far as you know, they just met whenever the law required?

A. Yes, sir.

Q. Then as to the board meetings, you don't know how long they would continue, and you wouldn't be present?

A. No, sir.

Q. But the loan meetings that were held normally once a week and sometimes twice a week—was that your testimony?

A. Yes, sir.

Q. —they would last for how long?

A. Well, they rarely ever lasted over about two hours.

Q. And frequently no longer than how long?

A. Oh, about an hour or a little over.

Q. Then except for that time, Mr. George B. Parr presumably would be at some other place or other places, where he had business interests or work to do?

A. Yes.

Q. Are you familiar with the various business enterprises, industries in which he was interested as owner, partner, or stockholder?

A. I know of some of them, I am sure.

Q. What were they, Mr. Nunley?

A. He was president of the San Diego State Bank at that time, and he had interest in some—in an oil company production.

Q. The Parr Delaney Oil Company?

A. Yes.

Q. Do you know what his interest was? Was he president of that company?

A. I couldn't say, and he had ranching interests and, of course, I don't know this as a fact, but it was my understanding he had an interest in two automobile agencies and possibly other businesses. I am not familiar with the rest of them.

Q. With reference to the testimony about any discussing concerning microfilm being present or not present, was it customary at the loan committee meetings to say "Well, the microfilm are present," or "The microfilm aren't present"? Was that part of the agenda for the loan committee meetings?

A. That type of conversation?

Q. Yes, sir.

A. No, sir.

Q. It had nothing to do with loans?

A. No, sir. We weren't a policy committee, or discussing policy, or anything like that.

Q. You do not know how long before February 18, if the microfilm were filed elsewhere, misplaced or stolen, or otherwise disposed of, you do not know when that occurred with reference to the 18th, only that on the 20th for

some reason or other you ascertained they were not present, is that correct? Do you understand my question?

A. It was a little bit long.

Q. Do you know how long before the 20th of February, 1954—how long had it been since you yourself had occasion to look at, examine, and see the microfilm?

A. I never had occasion myself to look at them unless I needed information, and I would get the girl who was custodian of that to get it for me.

Q. Do you know how long it had been prior to February the 20th you had last had occasion to have someone search to see, examine, or give you information to be revealed by the microfilm records?

A. No, sir.

Q. You don't know whether it was a week or a month or six months?

A. No, sir.

Q. Now, with reference to Oscar Carrillo being in the bank more after 1951 and before 1951, as a matter of fact he obtained a loan in 1951 at that bank, did he not?

A. About that time, yes, sir.

Q. And the loan was a 30 or 90-day loan, and was it renewed from time to time?

Mr. Wilkey: We object to the question as being duplicitas, I think it contains testimony with a question added onto it.

Mr. Foreman: I will withdraw the quesion and rephrase.

The Court: Very well, sir.

Q. (By Mr. Foreman) What was your policy of the bank with reference to making loans to ranchers in that area, such as Oscar Carrillo, as to time?

A. Usually if a fellow was a rancher or farmer, we would make him a note in which we would take a mortgage and make it come due in probably six months; then in between times there, that fellow—he would get what money he needed then, and then in between he would come in and if he needed two or three hundred dollars or a thousand, or whatever else he needed, he would get it in between and sometimes we would make those note 60 or 90 days, but usually we tried to make them come due, that the note that we held, the collateral, would mature.

Q. Were those on or before notes, where payments in installments were made on them?

A. Sometimes.

Q. Then do you mean to suggest or imply by stating you saw Oscar Carrillo in the bank more after 1951 there was anything surreptitious about his coming there any different than any other customer of the bank?

A. No, sir.

Q. With reference to the occasions when you saw Diego Heras come to the Texas State Bank of Alice and go to the cashier's office, would you say there was anything different or any difference in the manner in which he went there and other customers who came in to see the cashier, or did you see other people than Diego Heras go into the bank office of Mr. Donald and have Mr. Donald leave the customer there and come to the windows?

A. Yes, I have seen Mr. Donald do that when he had customers in there.

Q. As a matter of fact, it was nothing unusual at all to have the customer go to any officers desk and have that officer leave the customer at the desk and walk over to the window and come back to the customer at his desk?

A. No, sir.

Q. That goes on in all banks you have ever worked in, does it not, Mr. Nunley?

A. Yes, sir.

Q. Did you ever see or hear Diego Heras bring any candy there to a Mrs. Fitch, or her passing it around to the employees of the bank?

A. No, sir, I don't recall anything like that.

Q. Where was Mrs. Fitch's window when she was a teller with reference to the note teller's window?

A. She was in the next one, the immediate next one to it.

Q. She was—were those numbered from the front, 1, 2, 3?

A. Yes, I believe there were four windows, three paying and receiving tellers and the note window.

Q. Do you know whether or not they had numbers designating the tellers' windows, 1, 2 and 3, and if so, what was her window?

A. Hers would be 3.

Q. And if there had been a number instead of a note teller, it would be 4?

A. Yes, sir.

Q. Do you have such a number in your window?

A. No, sir, I didn't.

Q. Just called the note teller?

A. Yes, sir.

Mr. Foreman: That is all, Your Honor.

7-1624 REDIRECT EXAMINATION

Q. (By Mr. Wilkey) With reference to the declining amount of time Gibbons Parr spent in the bank prior to

your departure, who performed the duties of Gibbons Parr when he was absent from the bank there?

A. Mr. Donald did.

Q. Tom Donald?

A. Yes, sir.

Q. With reference to Mr. George Parr's business interests in the Parr Delaney Oil Company, who was Mr. Parr's partner?

A. Earl Delaney.

Q. Do you know whether or not he is still his partner?

A. No, sir.

Q. You just don't know?

A. No, sir.

Mr. Foreman: We will stipulate may it please the Court, he is not his partner, and that Mr. Parr has no interest whatever in the Parr Delaney Oil Company, that he has been put in bankruptcy and the bankruptcy court is administering the Parr Delaney Oil Company so far as George Parr's interest is concerned.

Mr. Wilkey: We object to that statement as uncalled for, unsworn testimony not subject to cross examination, and we ask that the jury be instructed not to regard it as opening up other fields.

The Court: What says the defendant?

Mr. Foreman: May it please the Court, it was only—he was attempting to insinuate or suggest something that was not true, and in the interest of justice—

The Court: I want to say to the jury, a question asked by counsel is not to be considered as insinuation, that if it

is a proper question I will instruct the jury again that you are only to consider the sworn answers of the witness and you will not consider questions asked by counsel standing by themselves.

Now, you may proceed.

Mr. Foreman: I would not have been warranted and would certainly not have made the observation that I did make except for the innuendo or suggestion as to Delaney's interest. I assume the suggestion is injected here to explain why the prosecution doesn't propose to offer Mr. Delaney as a witness, or for argument.

The Court: I don't know why the question was asked, but the question was "Is he still a partner of Mr. Delaney," and the witness said he didn't know. I do believe if the Government wanted to establish that, then that means they would have to establish it by someone else. I think the statement went beyond the question asked, and the jury is instructed not to consider the statement made by counsel, Mr. Foreman.

Q. (By Mr. Wilkey) In regard to Mr. Parr's two automobile agencies, do you know where they are located?

A. They are in San Diego.

Q. Both of them are in San Diego?

A. Yes, sir.

Q. Do you know what make cars they handle?

A. One was Ford and the other Chevrolet.

Q. Mr. Parr had both the Ford and the Chevrolet agencies in San Diego?

A. That was my understanding. I wouldn't know for sure.

Q. In regard to the missing microfilm, had any microfilm ever disappeared from the bank before February of 1954?

Mr. Foreman: May it please the Court, the witness has not testified he had ever had any connection with the microfilm. It could only call for hearsay. He is not—it has been definitely established it wasn't in his care, at least not after the first few months as a bookkeeper, and not any time during the four or five years he has testified about, and this calls for hearsay.

The Court: Well, he was in the bank from 1938 until 1954. If there had previously been microfilm missing, or money missing, it would probably have been known by those in the bank.

What is the materiality of it, Mr. Wilkey?

Mr. Wilkey: I want to show whether or not he had ever heard of any record such as microfilm vanishing before February of 1954.

Mr. Foreman: That is our objection, Your Honor, asking for hearsay.

Mr. Wilkey: He is a loan officer of the bank. He is concerned with the performance of his duties, certainly with the use from time to time of the records of the bank.

The Court: Objection sustained.

Mr. Wilkey: No further questions, Your Honor.

Mr. Foreman: No further questions.

The Court: You may step down.

7-1626 WILLIAM A. DIMLER,

a witness called in behalf of the Government herein, having been first duly sworn on oath, testified as follows, to-wit:

7-1627 DIRECT EXAMINATION

Q. (By Mr. Wilkey) Will you state your name, sir?
A. William A. Dimler.
Q. Where do you live, Mr. Dimler?
A. In San Antone, Texas.
Q. How long have you lived in San Antone?
A. All my life.
Q. How are you employed?
A. Special Agent with the Intelligence Division of the Internal Revenue Service.
Q. On February 17, 1954, on Wednesday, February 17, 1954, where were you, sir?
A. I was in Corpus Christi and in Alice, Texas.
Q. In Alice, Texas, where were you?
A. At the Texas State Bank.
Q. At the Texas State Bank in Alice?
A. Yes.
Q. Did you talk to anyone there?
A. I did.
Q. With whom did you talk?

A. Mr. B. F. (Tom) Donald, Jr.

Q. Where did you talk with him?

A. In the Texas State Bank.

Q. All right. Did you have occasion to talk with Mr. Donald about any of the records of the bank?

A. I did.

Q. Which records?

A. I asked to examine the bank's original records, the deposit slips and the microfilm records of canceled checks issued by depositors of that bank.

Mr. Foreman: May it please the Court, we ask that this conversation, and questions and answers concerning the conversation or testimony concerning it, be limited to the Defendants B. F. (Tom) Donald and the Texas State Bank of Alice, and object to it on behalf of each and all of the defendants.

Mr. Wilkey: We offer this conversation as against Mr. Tom Donald, cashier of the bank, and the Defendant Texas State Bank of Alice.

The Court: It will be so received, and the jury is so instructed.

Q. (By Mr. Wilkey) Now, then, give us in as much detail as you can, Mr. Dimler, the conversation which you had with Mr. Donald about the microfilm records of the bank.

A. Well, when I asked him for the microfilm of the canceled checks issued by depositors of that bank, he stated that they had been destroyed. I requested them for the period beginning 1949 and ending with 1953. I asked Mr. Donald

when they were destroyed, and he stated that he did not know, that it could have been any time. I asked Mr. Donald why they had been destroyed, and he stated that they had all the records that were required to be kept of them by the State of Texas, and that the bank had in the past destroyed them at regular intervals.

Q. Did Mr. Donald say the bank had destroyed its microfilm at regular intervals?

A. He did.

Q. Did you have any conversation with him about what microfilm he had for all canceled checks at that time?

A. Yes, sir.

Q. Did he tell you what records the bank had at that time in microfilm?

A. He did.

Q. What records, if any, did he have?

A. He stated they had the microfilm beginning January 1, 1954 to that present time.

Q. And that present time was February 17, 1954?

A. It was.

Q. In other words, approximately six or seven weeks of records?

A. Approximately, yes.

Q. On the microfilm?

A. Yes.

Q. But from 1949 to 1953 was not present?

A. That is what he said.

Q. Was there any conversation in regard to who was responsible for the destruction of this film?

A. Yes.

Mr. Foreman: May it please the Court, I object as leading and suggesting to the witness what he wants him to say.

The Court: Objection overruled.

Q. What was the nature of that conversation?

A. Well, I asked Mr. Donald what his position was with the bank, and he stated that he was the vice president and cashier of the bank, and then I asked that, as cashier, was he in charge of the bookkeeping section and he answered that he was, and then I asked, as head of the bookkeeping section, which—well I asked there if the bookkeeping section microfilmed the checks, and he said that they did, and then I asked him, as cashier and as such head of the bookkeeping section, which microfilmed the checks, was he not responsible for the destruction of those microfilm, and he stated, "No, anyone could have done it."

Q. All right, sir. Now, on the 16th of February, 1954, on Tuesday of that week, where were you, sir?

A. I was in Corpus Christi and at San Diego, Texas.

Q. Where were you in San Diego?

A. At the San Diego State Bank.

Q. Whom did you see there?

A. Mr. C. G. Palacios.

Q. What was his capacity with the bank, if you know?

A. At that time, he was vice president and cashier of the bank.

Q. All right, sir. Did you make any inquiry at the bank in regard to the microfilm records of the San Diego bank?

A. I did.

Q. And did you ask for certain records?

Mr. Foreman: May it please the Court, Mr. Palacios is not a defendant here and we object to that conversation with him as hearsay as to each of the defendants.

Mr. Wilkey: Your Honor, I am not going to offer the

conversation, but I am endeavoring to show what transpired, and the San Diego State Bank is a defendant, and the Defendant George Parr is president of that bank.

The Court: Well, was president. You said is. You mean was at that time?

Mr. Wilkey: Yes.

Mr. Foreman: May it please the Court, then we object to it as to all defendants except the San Diego State Bank, and object to it as to the Defendant George Parr unless it be established he was personally present at the time of this conversation with Mr. Dimler and Mr. C. G. Palacios.

Mr. Wilkey: Your Honor, we are not going to offer any conversation but acts, which are not hearsay and would be admissible against all defendants.

Mr. Foreman: I think that the act he wants to offer is bound to be hearsay, and I would like to establish it either at the Bench or out of the presence of the jury, Your Honor, because it may be that it is the essence of the objection, the act. He is establishing, the inference drawn. We have a different conception, I think, as to the hearsay rule. He assumes whatever this man says somebody told him happened was an act, rather than hearsay, and I want to establish that, if we may be permitted to do so.

The Court: Very well. I will hear the testimony out of the presence of the jury and I will then determine whether the jury should hear it. Following that, court will take a recess and the jury is excused for 20 minutes. It will probably be longer, but you may stand at ease for 20 minutes.

(The following proceedings were held out of the presence and hearing of the jury.)

Mr. Wilkey: May I proceed, Your Honor?

The Court: Yes, and will the record show these proceedings are without the presence and hearing of the jury.

Q. (By Mr. Wilkey) Mr. Dimler, without detailing any conversation, what did you do when you went to the San Diego State Bank there on the 16th of February, 1954?

A. I went there with the purpose of examining certain bank ledger sheets, deposit slips, and microfilm records of the bank.

Mr. Foreman: We will object to that if they offered it in the presence of the jury as to his motives and purpose in going there, not as to hearsay, but being his motive and purpose.

The Court: What says the Government?

Mr. Wilkey: Well, I think it is admissible as establishing the background of his visit. I don't think it is essential to the testimony I want to offer, and I would as soon skip that if it is objectionable.

The Court: Very well. Can you advise the Court what it is you expect to prove by this witness?

Mr. Wilkey: I just want to prove two things: That he went to the bank, that he had a conversation with Mr. Palacios, without going into the details of the conversation,

and we have already established Palacios was the executive vice president of the bank and that he went into the vault and looked at the place where the microfilm records were kept, and that they were not there.

Mr. Foreman: May it please the Court, this man, being not an employee of the bank, could only know where the microfilm records were kept by something told to him by Mr. Palacios, and therefore would be the ultimate fact and would be hearsay, and would be a conclusion based on hearsay.

The Court: Well, now, this man is in the Intelligence Division of the Internal Revenue Service. Mr. Dimler, did you go there on an official investigation?

The Witness: I did.

The Court: For what? Were you inspecting the bank?

The Witness: No, Your Honor. I was investigating an income tax return that had been filed.

Mr. Foreman: May I ask him a question, Your Honor?

The Court: You may.

Mr. Foreman: Had you ever—

The Court: I am having a difficult time finding out what this testimony is to be. Any assistance I may get from either side will be welcome.

Mr. Wilkey: I think I can make it clear. As to what we

want to offer, it is immaterial why he went there or anything else, but what is material is that he contacted the officer of the bank in charge, and the bank is a defendant here, that after doing so, he was shown the place where the microfilm records were kept and they were not there.

The Court: Did he ask for the microfilm records?

The Witness: I did.

Mr. Wilkey: Yes, he did.

The Court: Mr. Foreman?

7-1635 VOIR DIRE EXAMINATION

Q. (By Mr. Foreman) Mr. Dimler, had you ever—do you know—are the microfilm records of banks generally kept at the same place in different banks or different places?

A. They are kept in different places usually.

Q. Had you ever inspected the microfilm records of this bank any time before?

A. I had not.

Q. Based on whatever Mr. Palacios or someone else would have told you, you would not have known where to look or did you actually look to see at any place there that was pointed out to you?

A. I looked at where Mr. Palacios pointed out to me where the microfilm had been kept.

Q. Except for that, you would not have known where to look for the records at the bank except for his—for what he told you?

A. Not specifically, no.

The Court: Mr. Wilkey, is this offered as against any defendant except the bank?

Mr. Wilkey: Your Honor, we think it is not hearsay, and it is admissible as against all defendants, being acts but if the Court feels it should be offered as to the Defendant The San Diego State Bank only, we would offer it certainly as to that bank only and Mr. Palacios is the agent of the bank and spoke with the authority of the bank.

The Court: I think as far as the bank is concerned, he could speak for it. It will be limited and admissible only as against the bank.

Mr. Wilkey: Very well Your Honor.

The Court: Is there anything further?

Mr. Wilkey: That is all I propose to develop from this witness.

Mr. Foreman: That is all.

The Court: Very well. Court will recess for 20 minutes.

(Short recess.)

(The following proceedings were held in the presence and hearing of the jury.)

The Court: Be seated, please.

The jury is instructed that the testimony of this witness is admissible only insofar as it pertains to the case against

the San Diego State Bank, and it will be considered by you only for that limited purpose.

7-1637 DIRECT EXAMINATION (CONTINUED)

Q. (By Mr. Wilkey) Mr. Dimler, with reference to Tuesday, February 16, 1954, at the San Diego State Bank there, did you see any records of the bank?

A. I saw some bank ledger sheets, yes.

Q. Did you see any microfilm records of the bank?

A. I did not.

Q. Did you have occasion to look for the microfilm records of the bank?

A. Yes.

Q. Will you describe just exactly what was done, limiting yourself to what was done and with whom you were at the time?

A. I walked with Mr. Palacios to the vault of the San Diego State Bank, where he permitted me to examine two filing cabinets which, when the drawers were opened, were empty.

Q. All right, sir. For what period of time were you looking for the microfilm records, covering what period of time?

A. For the period beginning 1949 and ending the year 1953, inclusive.

Mr. Wilkey: No further question, Your Honor.

7-1638 CROSS EXAMINATION

Q. (By Mr. Foreman) When did you first confer with Mr. Wilkey or any of the staff of the United States Dis-

trict Attorney's office for the Southern District of Texas in connection with this investigation, Mr. Dimler?

A. In connection with this trial, it was in November, 1956.

Q. The trial was not a part of my question.

A. I am sorry.

Q. My question was, when did you first confer with Mr. Wilkey or any of his assistants in connection with this, and the word is, investigation?

A. That would be in November, 1956.

Q. Then you had not talked with him or with Mr.—who was the man—Dowd, prior to November of last year?

A. I believe that is correct.

Q. Who worked with you, Mr. Dimler, in connection with this investigation? What other agent of the service to which you are attached?

A. Special Agent Carl Gromatzky.

Q. How do you spell that?

A. G-r-o-m-a-t-z-k-y.

Q. Only the two of you?

A. Yes.

Q. Was he with you on each of these two occasions?

A. He was.

Q. Do you know when he first conferred with Mr. Dowd, Assistant United States District Attorney, about the investigation?

A. No, I do not.

Q. Do you know whether Mr. Dowd himself was personally present in the years 1954 in Duval County and in Jim Wells County in connection with this investigation?

A. In the year 1954?

Q. Yes, sir.

A. No, I do not.

Q. Now, when did you last see Mr. C. G. Palacios, the man who went with you to the file cabinet? Have you seen him in the last few days, hours, weeks, or months.

A. No.

Q. When was the last time?

A. I believe the last time was in November, 1956.

Q. That was here at the trial?

A. Yes.

Q. Did you talk with him at that time about this case?

A. No.

Q. He was here as a witness in the former trial of this case, was he not, sir?

A. I do not know whether he was a witness or not.

Q. Where did you see him and at what place, with reference to the former trial of this case?

A. I saw him in the hall outside the other courtroom.

Q. While the case was being tried?

A. Yes, while the case was being tried.

Q. Was it the same day you appeared as a witness?

A. I believe it was, yes.

Q. And was he outside in the hall where the other witnesses were?

A. Yes, he was.

Q. Mr. Dimler, did you or Mr. Gromatzky take down in longhand or shorthand, or any other way, the conversation you had with Mr. Palacios?

A. We did.

Q. Do you have a copy of it?

A. We do. I do.

Q. Where is it?

A. It is in my brief case.

Q. Now, Mr. Dimler, where is Mr. Gromatzky today?

A. I do not know.

Q. Is he stationed at the same City of San Antone where you are?

A. No, he is not.

Q. Is he still with the service?

A. So far as I know, yes.

Q. Do you have or have you ever seen a regulation requiring the keeping of microfilm records by any, either state or federal, bank?

A. No, I am not familiar with the banking laws.

Mr. Foreman: That is all, Mr. Dimler.

Mr. Wilkey: No further questions, Your Honor.

The Court: Very well, sir, you may step down.

7-1641 LEVERETTE A. BAKER,

a witness called in behalf of the Government herein, having been first duly sworn on oath, testified as follows, to-wit:

7-1642 DIRECT EXAMINATION

Q. (By Mr. Wilkey) Will you state your name, sir?

A. Leverette A. Baker.

Q. And where do you live, Mr. Baker?

A. Here in Houston.

Q. And what is your business or profession?

A. I am a Special Agent of the Federal Bureau of Investigation.

And how long have you been with the Federal Bureau of Investigation?

A. Slightly over 20 years.

Q. And how long have you served here in Houston?

A. Approximately three years.

Q. All right, sir. Did you ever have occasion to talk with Mr. Tom Donald?

A. Yes, sir.

Q. When was the first time you talked with Mr. Donald?

A. It was on July 31, 1954.

Q. And where was that?

A. That was at the bank in Alice, Texas.

Q. And what was the subject of your conversation with Mr. Tom Donald, on July 31, 1954?

Mr. Foreman: May it please the Court, we ask that this testimony be limited to Mr. B. F. (Tom) Donald and/or the Alice State Bank, and object to it as to all—as to each of the other defendants.

Mr. Wilkey: We so offer it, Your Honor.

The Court: Very well. The jury is instructed that the testimony of this witness so far as it pertains to conversations with the Defendant Donald will be considered as evidence only insofar as it pertains to the case against the Defendant Donald and the Texas State Bank of Alice.

A. Mr. Willard Boone and I interviewed Mr. Donald concerning the disappearance of the microfilm record of the bank at Alice. We asked Mr. Donald what he knew about the disappearance of the records, as to when they might have disappeared and when, and who might have taken them, and he said that during the week of February 1, 1954, he had been to Harlingen, Texas to a golf tournament, and during the following week, the week of Feb-

ruary 8, 1954, he was back in Alice, at which time Mr. Gibbons Parr was in Houston attending the Fat Stock Show. It was during this second week of February that Mr. Donald told us he learned the microfilm record of the bank was missing.

Q. By the second week of February you mean the week of what?

A. The week of February 8th.

Q. Thank you. Please continue.

A. He said the disappearance of the records was brought to his attention by one of the girls working on the second floor of the bank, where all of the bookkeeping and records were maintained, in that some customer had contacted this girl and asked to see a particular check drawn on his own account and she couldn't locate the records, so she went to Mr. Donald to find out what to tell this customer. She said Mr. Donald told her to tell the customer it would take two or three days to find it, and to contact him later about it.

Mr. Donald told us after he had this conversation with the girl, he didn't discuss it with anyone else, that he went upstairs to the second floor of the bank where the record vault was kept. The records were maintained in the vault at night, and the microfilm were kept in steel cabinets which were located inside this vault. He went in there by himself and checked the vault, and didn't find any of the microfilm in the vault itself or loose around the vault, so he then checked the steel cabinets where they were kept and he found one tier, composed of eight file drawers, completely empty, and an additional tier, an additional drawer in the next tier, was likewise empty, making a total of nine empty drawers of this microfilm. We asked him concerning the disappearance of it, and as to when

this was first brought to his attention, and he did not know or recall the exact date. He said, however, that a treasury agent, I believe it was, had been there on the 12th or 13th of February, 1954, to see certain records, and he had told him the records were missing.

Q. Mr. Donald was talking about this disappearance of the microfilm records. Did he indicate this was something in the ordinary course of business, or something unusual, or what?

Mr. Foreman: May it please the Court, we object to that as calling for a conclusion of the witness as to what Mr. Donald meant. The ultimate fact is what was said.

The Court: I'll sustain the objection as to what he meant.

Q. (By Mr. Wilkey) Was anything said in that regard?

A. We asked Mr. Donald about the maintenance of records and what the bank practice was to destroying bank records, and he said they had no particular policy, certainly the microfilm were not destroyed because there were additional microfilm there preceding those which were missing.

Q. What period of time did he tell you was missing in those eight and a half drawers?

A. I don't recall what the period of time was.

Q. All right. Did Mr. Donald indicate by that, I mean say anything about any search or inquiry that he made for the missing microfilm?

A. He said that the only search he made was in the vault itself, and that he made no inquiry of the employees on the second floor, that he didn't tell anyone any of the records were missing. We asked him if he had discussed the matter with Mr. Gibbons Parr either by phone, since

Mr. Gibbons Parr was the normal head of the bank at that time and was in Houston, and he said no, he didn't feel he should discuss it over the phone, and we asked him if he had come to Houston to discuss it with Mr. Parr and he said no, he waited until Mr. Gibbons Parr returned to Alice from Houston at the end of that week. He said that—I believe it was on the 15th or the 16th of February, 1954, that Mr. Gibbons Parr had come in with Mr. McQueen of the State Banking Commission, I believe, and he told them then that the records were missing. He said that the only persons he had discussed it with prior to telling Mr. Parr was when the treasury agent had been there earlier that week, on or about the 12th or 13th, and he had told him then the records were missing.

Q. All right, sir. In conversation with Mr. Donald, did Mr. Donald state that any other records of the bank or any cash, or other possessions of the bank other than microfilm were missing?

A. He said the only thing he found missing from the bank were those particular microfilm records.

Mr. Wilkey: No further questions, Your Honor.

Mr. Foreman: No questions.

The Court: Very well, sir. You may step down.

Mr. Wilkey: Your Honor, at this time we would like to offer the testimony of Jo Faith Baker by transcript of testimony in the preceding trial.

Mr. Foreman: We are agreeable, Your Honor. She is pregnant and cannot be here.

Mr. Wilkey: Your Honor, I would suggest that Mr. Foreman look over my shoulder here as I read this, and I am going to ask a lady in my office to take the stand with the other copy so it may be given question and answer as it was in the previous trial.

The Court: Is she in the courtroom?

Mr. Wilkey: She will be immediately.

The Court: I will explain to the jury that the questions and answers that will be read are the questions and answers given at the previous trial of this case by the witness Jo Faith Baker, who is not now present. Parties have stipulated that her testimony given at the previous trial may be read at this trial and you will consider that this is not the testimony of the lady who is reading the answers, but it is the testimony of a witness named Jo Faith Baker.

Mr. Wilkey: There were two or three places to where objections to questions were made and objection sustained, therefore, if agreeable to counsel, I will not read the questions to which objections were made.

The Court: That is proper.

(The testimony of Jo Faith Baker, a witness for the Government in the former trial of this case was thereupon read into the record, the questions being read by Mr. Wilkey, the answers being read by Mrs. Shirley Kuykendahl.)

7-1648 DIRECT EXAMINATION

Q. (By Mr. Wilkey) What is your name, please, ma'am?

A. Jo Faith Baker.

Q. Where do you live, Miss Baker?

A. In Alice, Texas.

Q. How long have you lived there?

A. Well, since I was in the Fifth Grade. I don't remember how long that is.

Q. Where do you work?

A. First State Bank.

Q. Did you use to work for the Texas State Bank of Alice?

A. Yes, sir.

Q. That is the bank immediately preceding the First State Bank that you work for now?

A. Yes, sir.

Q. In the same building?

A. Yes, sir.

Q. Were you working for the Texas State Bank of Alice in February, 1954?

A. Yes, sir.

Q. What were your duties there in the bank in February, 1954?

A. Well, I was working in the bookkeeping department. During that I was running the proof machine or posting machine.

Q. What else were you doing besides the proof machine and posting?

A. Sometimes I worked with film, photographing records. Sometimes I worked with the microfilms.

Q. What did you do with the microfilms?

A. Mostly I marked it in the logbook.

The Court: Filed it is what you mean.

Q. Did you file it?

A. Yes, I filed it too.

Q. Where did you file it?

A. In the vault upstairs.

Q. And where in the Vault?

A. They have some filing cabinets in there.

Q. When you say you marked it in, where was it coming from?

A. From the Recordak Company here in Houston.

Q. You would mail it off to be developed here in Houston and returned?

A. Yes, sir.

Q. How many rolls a week would you mail off and get back?

A. I think they went off about every two or three days, and they came back in two or three days.

Q. When you logged it in, what did you do?

A. I wrote down the date that it came to the bank.

Q. Do you have that logbook that you brought with you?

A. Yes, sir.

Q. May I have it, please? This is the logbook in which you logged all the microfilm?

A. Yes, sir.

Q. Will you turn here, wherever it is in the book, to the page for February, 1954? Do you have that?

A. Yes, sir.

Q. Will you look through this page and the following pages and indicate on which day there, from your records, records on which—what was the last day in February on which you logged in any microfilm?

A. February 18.

Q. February 18?

A. Yes, sir.

Q. How can you tell that, please?

A. Well, I used to could tell my writing better than I can now. It has changed. But that is the last one that I made any entries in this book.

Q. On February 18?

A. Yes, sir.

Q. Do you recall anything that occurred there in the bank on February 18?

A. Yes, sir. After I had marked it in this book, I went to file the film in the vault, and there wasn't any in the drawer.

Q. There wasn't any film in the drawers?

A. No, sir.

Q. What did you do?

A. Well, I started looking in some other drawers.

— — — —

Q. How many drawers did you look in?

A. It was several.

Q. At that time, when you first found some empty, did anything else occur that day at the bank?

A. Yes, sir.

Q. What was that?

A. When I went in the storeroom—I have forgotten what I went in there to look for—but someone had emptied some match cartons out of a big box onto the floor, and the box was gone.

Mr. Foreman: I didn't get the last sentence. Something was gone?

The Court: Emptied what out of what?

A. The little match cartons out of the big box, and the big box was gone.

— — — —

Q. (By Mr. Wilkey) All right. Will you explain what you mean by the cartons? What were they full of? Tell us what the cartons were.

A. The little boxes of matches.

Q. In the big carton?

A. The big carton.

Q. All right.

A. When they shipped them from wherever it was they were made, they came in these cardboard boxes.

Q. How big were those cardboard boxes in which the matches were shipped?

A. I don't remember for sure.

Q. Can you indicate to the jury with your hands?

A. About like that, and about this tall.

— — — —

Mr. Wilkey: The record will be incomplete here because there is nothing to show how far she indicated.

— — — —

Q. Just cardboard cartons?

A. Yes, heavy cardboard.

Q. And were they there in the storeroom, and they were gone?

A. They were gone.

Q. What was on the floor?

A. The little boxed of matches, like this.

Q. Were they shipped in the carton?

A. Yes.

Q. May I have this book here, this record?

A. Yes, sir.

— — — —

Mr. Wilkey: At this point I asked that it be marked, and it was marked Exhibit 106. This has previously been identified by the witness—

Mr. Foreman: No objection.

— — — —

Q. Have you brought with you some of the microfilm that is used there in the bank?

A. Yes, sir.

Q. Would you show us a box of microfilm before the checks are photographed?

A. That is this box.

— — — —

Mr. Wilkey: The record is again incomplete here. We don't have the microfilm, but something like it has been exhibited.

— — — —

Q. And how many feet are in that?

A. Two hundred.

Q. And is that sent off all in one piece to be developed, or is it sent off piece by piece?

A. It is sent off in about 100 feet at a time.

Q. Now, what size boxes does it come back in after it has been developed at the Recordak place in Houston?

A. We mark what we photograph on this box and mail it to them, and then they mail it back to us.

Q. Is that in a box similar to that which it came in?

A. (No answer.)

— — — —

Q. Was this small box that you have in your hand there one of the type that it came in when on February 18 you

started to file film and discovered that the other microfilm was gone?

A. Yes, sir.

Q. That was what you were filing?

A. Yes, sir.

Q. Is a box of that type what you logged in here in this book that I have?

A. Yes, sir.

Q. Which I have just given the Clerk to mark?

A. Yes, sir.

Q. What time of day was it that you were logging in this microfilm?

A. It was in the morning.

Q. Do you know Mr. A. C. McCain?

A. Yes, sir.

Q. Do you know whether or not Mr. McCain was at the Texas State Bank in Alice during that week in which the 18th of February would come?

A. I don't remember. I remember him being there, but I don't know whether it was that same week.

Q. Was it before or after you discovered the empty drawers where the microfilm was filed?

A. I thing it was after, but I am not sure.

Q. Who is Mr. A. C. McCain?

A. He is a bank examiner.

Q. For the record here, will you describe in feet about the size of the cartons that you indicated with your hands, the empty or the missing matchbox cartons that were missing from the storeroom? You put your hands out about the size of those boxes, and tell us how many feet that is.

A. I will put my hands out, but I can't tell you how many feet it is.

Mr. Wilkey: Will counsel for the defense agree that that is approximately two to two and a half feet, for the record?

Mr. Foreman: I am sure that there wouldn't be any damage done to anybody by admitting that, Your Honor.

Mr. Wilkey: Well, that is my best estimate. If you have another one, just state it.

The Court: Don't testify. Just go ahead.

Q. (By Mr. Wilkey) Did you handle the microfilm any more after you discovered this was missing?

A. I photographed some and cut it and sent it in to Houston, but I didn't mark it any more.

Q. Who took over that job?

A. Mildred Daniel.

Q. Who is your immediate superior?

Mr. Foreman: Pardon me. Did she say that was the last day she had anything to do with the microfilm?

(Private conference between counsel for the respective parties.)

Q. (By Mr .Wilkey) Who was your immediate superior there in the bank?

A. At that time?

Q. At that time.

A. Jewell Mayfield.

Q. Did you report this to your superior in the bank?

— — — —

Mr. Wilkey: I am sorry, Your Honor, there was an objection there.

— — — —

Q. (By Mr. Wilkey) Do you recall whether or not any inquiry was made of the employees by the cashier of the bank, Mr. Donald?

Mr. Wilkey: We offer it as to Mr. Donald and as to the Texas Bank.

Mr. Foreman: Or the Texas Bank.

The Court: Only.

Mr. Foreman: Only to those.

The Court: Limited to that, gentlemen of the jury, then.

Q. (By Mr. Wilkey) You may answer.
A. I don't remember any more.

— — — —

The Court: The jury is again so instructed.

— — — —

Q. You don't remember?
A. Not any more.

— — — —

Mr. Wilkey: There was an objection, and we will go to the next one on Page 13—go to the middle of Page 14.

— — — —

Q. (By Mr. Wilkey) All right. I show you what has been identified as Government's Exhibit 106-A, being the

lefthand page, and 106-B, being the righthand page of this book logging in and out the microfilm, and I will ask you to explan for us the entries here on these two pages. Let's take the lefthand column first. What does that column indicate?

— — — —

Now, Mrs. Baker, will you explain here what this lefthand column is?

A. That is the number of these kind of film boxes (indicating a box).

Q. Now, then, are they the film boxes with the returned, developed microfilm?

A. Yes, sir.

Q. Now, what does this next column indicate here?

A. Well, it indicates previous statements sent, or if we sent the film off again to get a facsimile of a check.

— — — —

Mr. Wilkey: And there was an objection there.

— — — —

Q. (By Mr. Wilkey) What does it mean if there is nothing written in this line here, in this column?

A. Just our daily work that has been photographer.

Q. And what is on the daily work film?

A. It is checks that belong to the bank or ones that were sent to the other banks, and the deposit slips.

Q. What is the next column here?

A. That is the day we send the statement in to Houston to be developed.

Q. And what is the fourth column?

A. That is the day we receive it back from Houston and file it in the vault.

Q. You have explained with regard to the page marked 106-A. Would that same explanation be true of the page marked 106-B?

A. Yes, sir.

Q. I note that these pages in the book as brought into Court seem to have a break in the binding, and that the pages are numbered on the lefthand 36 and on the righthand 41. I want to ask you if these are any pages of your record missing, or were these pages of the book taken out before the record was made?

A. I believe they were taken out before.

Q. And how can you tell?

A. This is box No. 7088, and this one is 7089.

Q. For the record, the 7088 is on which page?

A. On page 36.

Q. And it is at the top or bottom?

A. It is at the bottom.

Q. 7088, then, is at the bottom of page 36, and where is 7089?

A. At the top of page 41.

Q. Looking at the dates here of the time the film was sent away, are these dates in the same month?

A. Yes, sir.

Q. At the bottom and the top of the page?

A. Yes, sir.

Q. Then, from that, as I understand your testimony, these two pages are consecutive in the record of the bank of the sending away and the receiving back of the microfilm?

A. Yes, sir.

Mr. Wilkey: I offer in evidence Government's Exhibits 106-A and 106-B.

The Court: Is there objection?

Mr. Foreman: We agreed to it a while ago. This is the second time it is offered.

The Court: Very well.

Mr. Wilkey: No further questions.

Mr. Foreman: Will you assist me in the same way, little lady?

Mrs. Kuykendahl: I will be happy to.

(The following testimony was read to the jury from the testimony of Jo Faith Baker at the former trial of this cause; the questions being read by Mr. Foreman and the answers being read by Mrs. Kuykendahl:)

7-1662 CROSS EXAMINATION

Q. (By Mr. Foreman) I know your first name is Jo and your last name is Baker, but I haven't to this moment gotten your middle name.

A. Faith, F-a-i-t-h.

Q. You are Miss or Mrs.?

A. Mrs.

Q. What is your husband's name?

A. Royce.

Q. R-o-y-c-e?

A. Yes, sir.

Q. And you live at Alice, Texas?

A. Yes, sir.

Q. It is my understanding that up until around the 18th of February, 1954, you were the one who did all of the entries in this book that the jury is examining?

A. Not all of them, but quite a few of them.

Q. And I don't recall what you said with reference to your handwriting having changed, did you use an expression with reference thereto that you can't identify your handwriting because it has changed, or you can identify it because it has changed?

A. Well, it looks like my handwriting to me.

Q. What was your statement with reference to your handwriting having changed? Do you mean you write differently now than you did then?

A. My numbers look a little bit different.

Q. But are there any particular entries on the book that you couldn't identify positively as being yours?

A. Well, I wouldn't be as sure now as I was when I first looked at it, but I think I can.

Q. At this time you don't know for sure that any of the entries in the book are yours?

A. That was over two years ago.

Q. Ma'am?

A. That was over two years ago, but when I first looked at it, I knew for sure.

Q. I am not undertaking to argue with you or ask you why, but, if I understand your answer, your testimony is that at one time you were fairly sure that was your writing, but at this time you are not?

A. Well, I know that one is.

Q. Which one?

A. February 18.

Q. Is that the only one that you do undertake to identify?

A. I will try to identify some others, if you want me to.

Q. I mean did you say heretofore in testimony in response to Mr. Wilkey that that is all you recall as having been made by you?

A. Well, I never have tried to identify the other ones. I did right at first, but I haven't since then.

Q. Now, have you had occasion yourself to make application to the Recordak Company for a reprint of any of these microfilm records?

A. You mean for that day?

Q. Any of them?

A. Yes, sir, I have sent for some.

Q. Well, for any of them that were reported or alleged to have been missing on the 18th of February, 1954?

A. No, sir. You have to have, you know, the film, and mark it on the film, and then send the whole box of film back to them.

Q. Well, have you ever worked at the Recordak Company here?

A. No, sir.

Q. What you mean is every time that you have gotten copies, you have sent the stuff to have a copy made from?

A. Yes, sir.

Q. You don't know whether there is a duplication of work with the Recordak Company itself here available in Houston, or not, do you?

A. No, I don't.

Mr. Foreman: All right. That is all.

Mr. Wilkey: No further questions, Your Honor.

The Court: Very well.

7-1665 **W. D. MAIN,**

a witness called in behalf of the Government herein, having been first duly sworn on oath, testified as follows, to-wit:

7-1666 **DIRECT EXAMINATION**

Q. (By Mr. Wilkey) Will you state your name, sir?

A. W. D. Main, M-a-i-n.

Q. And where do you live, Mr. Main?

A. In Houston.

Q. How long have you lived here?

A. Since 1942.

Q. Since 1942?

A. '2, yes, sir.

Q. Will you talk a little louder, please?

A. 1942.

Q. What is your business or profession?

A. I am a postal inspector.

Q. And with what department of the Government is that?

A. The Post Office Department.

Q. Is that a Civil Service job?

A. Yes, sir.

Q. You are a career man?

A. I am.

Q. How long have you been a postal inspector?

A. About 18 years.

Q. Have you, in the course of your work as a postal inspector, made an effort to locate certain persons in Duval County and vicinity?

A. I have.

Q. When did you make the search?

A. At various times, particularly in January and February of 1954, and in November of 1956.

Mr. Foreman: What was the date in 1954, please, sir?

The Witness: January and February.

Q. (By Mr. Wilkey) And Noevmber, 1956?

A. That is right.

Q. Where did you get the names of the persons for whom you were looking?

A. Off of copies of the annual reports of the Benavides Independent School District, which were filed with the Texas State Teachers Agency in Austin.

Q. For what years did those annual reports cover from which you got the names?

A. The fiscal years of 1950, 1951, 1952, and 1953.

Q. And in what month of '50, '51, '52, and '53 did those annual reports end?

A. August 31 of each year.

Q. Where did you go?

A. I went to all the post offices in Duval County and to the county seats of two adjoining counties, namely Alice and Hebbronville.

Q. What adjoining counties are they?

A. Brooks in the case of Hebbronville, and Jim Wells in the case of Alice, Texas.

Q. Do you have any familiarity now with the roads and inhabited localities of Duval County and the adjacent territories?

A. Yes, sir.

Q. I want to show you this map here and ask you if you are familiar with the localities depicted thereon?

A. Yes, sir.

Q. What locality does this map cover?

A. It covers all of Duval County and partially of Jim Wells, which is over here, and Brooks, down here (indicating).

Q. I want you to turn it around so the jury may see it and have you point out on this map where you went in your search for these people. I don't know that counsel can see this.

The Court: I suggest you use this board. It can be seen by more people.

Q. (By Mr. Wilkey) If you will hold it, I don't need to be up here. I will resume my seat and you can point out where you went.

A. (Indicating on map tacked to blackboard.) This is Alice, the county seat of Jim Wells County. This is Hebbronville, which is in Brooks County.

The Court: There are some of the jurors who can't see it. I suggest you put it right here (indicating), and stand at this side.

(The witness complied with the Court's request.)

A. Now, this is Alice, the county seat of Jim Wells County and it is ten miles to San Diego, which is the county seat of Duval County. It is 25 miles over here to Freer, which is the furthest west clear across the county. Right about here, approximately 15 miles up here in an oil field, is a village called Seven Sisters. It is not shown on this map, but it is right off this highway here (indicating).

Q. What is the size of Seven Sisters?

A. Oh, approximately 400 people, I imagine, oilfield roughnecks, oil-field workers, and all. It is the smallest post office we have. It is a Fourth Class post office.

This is Benavides. This is where the School District office was located at the time of the investigation.

This is Realitos and this is the main highway from San Diego down through Realitos and Hebbronville, and this is the highway down to Freer, Benavides, and down to Concepcion and San Diego. Those are the six towns in the county. That is all.

Q. I will show you what has been identified as Exhibit 9, and ask you if you have seen this before?

A. Yes, sir.

Q. All right, sir. Have you seen the names on that Exhibit 9 before?

A. Yes, sir.

Q. And did you find—did you make a search for any of the names on that list, Exhibit 9?

A. Yes, sir.

Q. Where were the names on Exhibit 9 taken from?

A. They were taken from the various annual reports for the fiscal years 1950, 1951, 1952 and 1953 of the Benavides Independent School District.

Q. Prior to coming to the courtroom, you had an opportunity to examine Exhibit 9?

A. Yes, sir.

Q. Now, then, did you make a search there in the area indicated for the names that were listed there on Exhibit 9?

A. I did.

Q. Did you find any of them?

A. I believe there was one man as among—I don't believe I see it here at the moment. I think there was one.

Q. Do you recall his name?

A. Speedy Martinez, I believe.

Mr. Foreman: I didn't catch it.

A. Speedy Martinez, I believe, Mr. Foreman. It has kind of slipped my memory.

Q. In addition to looking for them personally, did you make any inquiry for the names?

A. I did.

Q. Where did you inquire?

A. I went to all of the postmasters or senior clerks in those post offices in the County of Duval. I also went to the county seat of Jim Wells, which is Alice, and also down to Hebbronville of Brooks County, and made inquiry in the clerk's office and in the county seats of those counties to see if any of them—

Q. I couldn't hear you.

A. I made inquiry in the county clerk's offices, the assumed-names records, to see if they were of record in the court houses, in addition to making inquiry of the people in the post offices who had been there for many years in some instances.

Q. All right, sir. Now, then, at what time did you make that inquiry, about what dates?

A. Well, I began making them in January and February of 1954, and again in November of 1956.

Q. I see. All right, sir. Now, you may put down Exhibit 9.

Did you ever have a conversation with D. C. Chapa?

A. I did.

Q. And when was that?

A. On Sunday, January 24, 1954.

Q. And where was that conversation with D. C. Chapa on the 24th of January, 1954?

A. It was in the office of the Benavides Independent School District in Benavides, Texas.

Mr. Foreman: Pardon me. Did he say 1950?

The Witness: 1954.

Mr. Foreman: Excuse me. Go ahead.

Q. And who besides Mr. Chapa and yourself were present?

A. Inspector Roy H. Cauley.

Q. Who is Inspector Cauley?

A. He is a postal inspector, now retired and living in New Orleans, Louisiana.

Q. All right, sir. What was the nature of your conversation with Mr. Chapa?

Mr. Foreman: May it please the Court, we object to it as to all of the defendants except D. C. Chapa as hearsay.

Mr. Wilkey: We offer it as against D. C. Chapa only at this time.

The Court: Very well. The jury is instructed the testimony of this witness concerning conversations with the Defendant D. C. Chapa will be considered as evidence only against the Defendant D. C. Chapa.

Q. (By Mr. Wilkey) You may answer.

A. We informed Mr. Chapa as to our identity and purpose, and asked him what his position was with the school board and told him that we would like to see the records of the School District.

Q. Did Mr. Chapa tell you what his position with the school board was?

A. He did.

Q. What did he say?

A. He said he was tax assessor-collector.

Q. Did you see any records of the Benavides Independent School District?

A. Not at that time.

Q. Were you ever furnished, by Mr. D. C. Chapa, any records at all?

A. No.

Q. In what language did you carry on the conversation with Mr. Chapa?

A. English.

Q. In regard to his position on the Benavides Independent School District board, did you have any further conversation with him in regard to his appointment, compensation, or et cetera?

A. Yes, sir.

Q. What was that?

A. We asked him whether he was elected or appointed to the position, what his compensation was.

Q. What did he say?

A. He said he thought he was appointed. He wasn't sure whether he was appointed or elected. He said his compensation was $300 a month.

Q. What was this $300 a month, if he said?

A. I don't understand you.

Q. Did he say what this $300 a month was?

A. Compensation as tax assessor-collector.

Q. And how was that compensation paid?

A. By the school board. We then asked if he was paid any commissions or travel expenses, and he said he was not.

Q. If he was not paid any commissions or travel expenses, did he say what this $300 a month represented?

A. I don't recall except we were asking what his salary was, how much he earned as tax assessor-collector, and he said $300.

Q. That is what I am getting at, if he identified this $300 a month as salary. Did you have a conversation with Mr. Chapa in regard to his age?

A. Yes.

Q. What did he say about that?

A. He said he was born on or near, I believe he said, the Vargas Ranch December 6, 1856.

Q. 18-when?

A. '56. No, wait a minute. 1876. He was 58 years old at the time.

Q. Well, will you do some subtracting, Mr. Main, and see if we can get this date correct. The conversation was in 1954.

A. The conversation was 1954, and I believe he said he was born in 1886.

The Court: It would be '96, wouldn't it?

The Witness: '96. That would make him 58. I can fix that date and the reason for it.

Q. Let me put it this way. Instead of referring to the date, which there has been some confusion about, did he tell you how old he was?

Mr. Foreman: I think what he said would be better. The witness knows better what occurred, and we suggest the witness ought to be permitted to answer rather than have it suggested to him.

The Court: I believe the witness has already testified Mr. Chapa stated how old he was, hasn't he?

Mr. Wilkey: I want to make it clear because there have been several dates mentioned. I wanted to make it clear.

The Court: I will permit the question. Did he state how old he was?

The Witness: He stated he was 58.

Q. (By Mr. Wilkey) Did you ever see Mr. Chapa again after January 24, 1954?

A. Yes, sir.

Q. And when and where did you see him?

A. In the school board office, January 26, 1954.

Q. And who was present?

A. His son, Oscar Carrillo, and Attorneys Manuel Raymond and B. C. Wood of Laredo.

Q. Did you have any conversation with Mr. Chapa at that time?

A. I don't recall it.

Q. Did you ever have any conversation with him subsequent to January 24?

A. I don't recall any.

Q. Did you ever have an interview with Mr. Octavio Saenz?

A. I did.

Q. When was that?

A. I believe that was January 24 or 26. The 26th, I believe.

Q. Of what year?

A. 1954.

Q. And do you recall who was present?

A. Inspector Roy Cauley.

Q. Anyone else?
A. Not at that time.
Q. Where was this conversation?
A. In the Tex-Mex Railroad depot.
Q. In what town?
A. Benavides.
Q. Was there anything said by Mr. Saenz in regard to the matters about which you were inquiring?

Mr. Foreman: May it please the Court, with reference to Mr. Octavio Saenz, we object on behalf of all the other defendants and each of them as to any such conversations being hearsay and ask that the conversation with Mr. Saenz be limited in the jury's consideration to Mr. Saenz.

The Court: The jury is instructed the testimony of this witness concerning conversations with the Defendant Octavio Saenz will be considered only insofar as it pertains to the case against the Defendant Octavio Saenz.

Q. (By Mr. Wilkey) Mr. Main, was there anything there in this meeting in the depot at Benavides said by Mr. Saenz in regard to the matters about which you were inquiring?
A. Yes.
Q. And what was that?
A. We asked Mr. Saenz if he was present—

Mr. Foreman: May it please the Court, may we approach the Bench in the interest of time?

(The following proceedings were held at the Bench out of the presence and hearing of the jury.)

The Court: Let the record show this is out of the hearing of the jury.

Mr. Foreman: I am not certain of my recollection in this regard, but I think they are about to prove that this man Saenz stood on his Constitutional rights to remain silent and not say anything, and if so it would be highly prejudicial to present it to the jury, and would not be material, as I see it, to any part of the state's case. In other words, a man would have the right at that time or any other time, and the fact that he claimed his right, should not be used against him.

The Court: Would not be evidence here?

Mr. Foreman: Yes, Your Honor.

Mr. Wilkey: That matter came up at the last trial, Your Honor, and this witness has been carefully cautioned to make no reference to any claim—

Mr. Foreman: What will he say? I have forgotten.

Mr. Wilkey: I have asked him to avoid stating anything about any constitutional claim or refusal.

The Court: I think what Mr. Foreman wants to know is what is he going to testify.

Mr. Wilkey: He is going to testify to whatever Mr. Saenz said at that time.

The Court: What he did say, and not what he didn't say?

Mr. Wilkey: That is correct, and that is the way my questions have been phrased. I am sure if Mr. Main makes any reference to it, it will be inadvertent.

Mr. Foreman: It is not the motives of the prosecutor or the witness we are questioning or challenging.

The Court: I understand.

Mr. Foreman: I know the Court does, but I am not sure the prosecutor does, from his statement, therefore I would still like to know what he is going to say, if Mr. Wilkey knows, and I would like for the Court to pass on it before the damage comes out although his intentions are good.

Mr. Wilkey: I just asked him what he did say and I am sure he will testify what Mr. Saenz said, and I don't propose to inquire what he didn't say.

The Court: Do you think it is necessary for me to caution this witness out of the hearing of the jury he should not make any reference to—

Mr. Foreman: Yes, Your Honor—no, sir—I think Mr. Wilkey knows exactly what he is going to say, and I think he ought to tell us so we could pass on it and establish it. If Mr. Wilkey doesn't know, it is leaving up to lay juror a very fine legal point that should not be left

to this discretion, but should be settled in whatever the legal way is by lawyers and the Court.

Mr. Wilkey: To the best of my knowledge, the extent of his testimony is that Mr. Saenz told him who were the various officers and members of the school board. I believe that is all he will testify to.

The Court: That wouldn't have much probative value.

Mr. Wilkey: I want to get that out.

Mr. Foreman: I have no objection to that.

The Court: Let me make this suggestion. Will there be an objection if Mr. Wilkey asks a leading question, did he tell you—

Mr. Foreman: I would rather have it done that way.

Mr. Wilkey: I will do it that way.

The Court: Very well.

(The following proceedings were held in the presence and hearing of the jury.)

Q. (By Mr. Wilkey) Mr. Main, in reference to your conversation with Octavia Saenz at Benavides, January 26, 1954, did Mr. Saenz, in that conversation, tell you that he was president of the school board?

A. Yes.

Q. Did he tell you that Oscar Carrillo, Sr., the son of

D. C. Chapa, was secretary of the Benavides Independent School District board?

A. Yes.

Q. Did he suggest you see Mr. Carrillo for the records of the Benavides Independent School District, which you had asked for?

A. Yes.

Q. Did you ever have any other interview with Mr. Octavio Saenz?

A. No.

Q. Did you ever talk with Oscar Carrillo, Sr.?

A. Yes.

Q. When was that, sir?

A. January 26, 1954.

Q. Who was present?

A. Attorney Manuel Raymond, B. C. Wood of Laredo, myself, and Inspector Roy H. Cauley.

Q. Where was this?

A. In his office in the Benavides Independent School District, in Benavides.

Q. You say in the office there. Could you tell me which of the several rooms of the office it was held?

A. He was in the office which I was told was the office used by him.

Q. By Mr. Oscar Carrillo?

A. That is right.

Q. What was the conversation with Mr. Carrillo?

A. Well, it was very limited. He was represented at the time by his attorney.

Mr. Foreman: Just a moment. May it please the Court, we object to any explanation.

The Court: Objection sustained.

Mr. Foreman: We make the same suggestion to prosecuting attorney with reference to leading questions in order to avoid—

The Court: I suggest that be done, and I will instruct the witness not to characterize the situation such as saying it was limited. Just give us what did happen without any comment or opinion as to whether it was limited or extensive, and so on, and I suggest the use of leading questions.

Mr. Wilkey: Thank you, Your Honor. I will be glad to do that.

Mr. Main, did you ask him some questions in regard to seeing the Benavides Independent School District records?

A. I did.

Q. Were you told you could see them in about ten days?

A. I was.

Q. And did you see them in about ten days? I will put it this way, isn't it true you did not see them?

A. I did not see them there in the office.

Q. And is it not also true that you made another effort to see those records on February 5, 1954?

A. That is true.

Q. And that on that date, February 5, you likewise saw the Defendant Oscar Carrillo?

A. Yes.

Q. On that date, February 5, 1954, did you see—I will put it this way—

Your Honor, I find it as difficult to ask a leading ques-

tion intentionally as sometimes to refrain from asking it.

On February 5, 1954, is it not true that you saw the records of the School District, and that those records consisted entirely of one section of minutes of the school board?

A. That is true.

Mr. Foreman: Your Honor, I have no objection to what they consisted of. I mean I have no objection to the exhibit which he is about to offer, but for him to call them minutes until that has been authenticated, it having been established heretofore it was not minutes but—

Mr. Wilkey: Oh, no, Your Honor. He is misquoting the record.

Mr. Foreman: We object to this witness calling them minutes or the record reflecting them to be minutes.

The Court: For a particular reason, I have permitted and suggested the use of leading questions. Are you indicating, counsel, he has gone too far in his leading?

Mr. Foreman: I am objecting to the witness—no, sir, Your Honor, not that. To the witness testifying they were minutes. I have no objection to their being here for whatever purpose they are. They are in evidence and now—but it is my recollection that Mr. Wilkey disagrees with me, but it is my recollection Mr. R. R. Gonzales, the present keeper of the records of the Benavides Independent School District, has stated those do not appear to be what the question says and the witness says they are, minutes. It is our contention they are a preliminary draft to be adopted or

not, and it is the Government's contention they are minutes.

The Court: I will hear the witness state what they were presented to be, and if they were represented to be anything and who made such a representation.

Mr. Wilkey: That will be the purpose of our interrogation.

Mr. Foreman: We ask that the same limit be placed on the testimony, that it will be limited to Oscar Carrillo rather than admitted generally as to each of the defendants.

The Court: Very well. The jury is instructed the testimony of this witness with reference to a conversation he had with Oscar Carrillo shall be limited and considered only insofar as it pertains to the case against Oscar Carrillo.

Q. (By Mr. Wilkey) Mr. Main, I have handed you there what has been identified as Government's Exhibit 27, and I will ask you if you have seen Government's Exhibit 27 before?

A. Yes, sir.

Q. Where did you first see it?

A. I first saw it in the office of the Benavides Independent School District at Benavides, Texas.

Q. On what day?

A. January 26—no, February 5, I believe it was.

Q. 1954?

A. 1954.

Q. Was Mr. Oscar Carrillo present at this conversation we have been discussing?

A. That is correct.

Q. Please describe just how those minutes, Exhibit 27 there, came to your attention?

A. As I recollect the matter, I pulled open a drawer in the office, and those were lying in that drawer and I pulled them out and made an inquiry, "What is this," as I recollect I was told by Mr. Oscar Carrillo, Sr. that these were some minutes. At that time, I asked if I might take these if I would give a receipt, and later return them, and I was advised that I could do that and I did subsequently furnish a receipt to Mr. Milligan, who was at the time superintendent of the school and who, I believe, was acting in some capacity there in the District office. In any case, I furnished him with a receipt for this particular document.

Q. All right. Now, then, where is this desk in the drawer of which you found Government's Exhibit 27 there? In what room was it?

A. The desk was in Oscar Carrillo's office, which I understood to be his office.

Q. Was Mr. Carrillo present at the time you opened the drawer and pulled it out?

A. He was there, and two others in addition, Inspector Cauley—

Mr. Wilkey: At this time, we offer Government's Exhibit 27 as against the Defendant Oscar Carrillo, former secretary of the Benavides Independent School District, as against Octavio Saenz, former president of the Benavides Independent School District, as against D. C. Chapa, former tax collector of the Benavides Independent School

District, and as against Jesus Garza and Santiago Garcia, board members of the Benavides Independent School District at that time.

Mr. Foreman: We object to it as to all and each of these defendants generally, and separately, Your Honor, as to being hearsay.

The Court: The objection is overruled and Government's Exhibit 27 is admitted in evidence, and the jury is instructed they will be considered as evidence only insofar as it pertains to the cases against Oscar Carrillo, [illegible] C. Chapa, Octavio Saenz, Santiago Garcia and Jesus G. Garza.

Q. (By Mr. Wilkey) Mr. Main, did you ever see any records of the Benavides Independent School District other than these minutes here?

A. Yes, sir.

Q. And when was that?

A. I saw some, I believe it was February 12, 1954 in the court house at San Diego.

Q. In the Duval County court house?

A. Yes, sir.

Q. What records of the Benavides Independent School District did you see?

A. Well, I saw the current tax rolls and miscellaneous papers and some bank statements and canceled checks.

Q. In regard to the canceled checks and bank statements, did you make any search for any checks of particular years or dates?

A. I did.

Q. What years did you search for?

A. For the fiscal years 1950, 1951, 1952 and 1953.

Mr. Foreman: May it please the Court, we are objecting to a search made at a place other than the point at which these records were officially kept or to be kept. He is testifying as to something he looked at in the District Clerk's office in the courtroom in San Diego, a different city from Benavides, and not the tax office, and the suggestion and implication and therefore the obvious feature of the testimony being by that testimony calculated to mislead the jury that there was at this point where he has made this search all the records of the Benavides Independent School District, it having heretofore been established in this record that there were rooms full of such records to such extent, I believe, the words were "it would take a year to sort."

The Court: Doesn't the objection go to the weight of the evidence? In other words, if he looks other places—

Mr. Foreman: Yes, I think the Court is correct on it, and I guess it does go to the weight rather than to the admissibility.

The Court: Could you argue he shouldn't have found something at some other place?

Mr. Foreman: He didn't look at the right place? Yes, I withdraw the objection.

Q. (By Mr. Wilkey) In whose custody were these records you looked at, Mr. Main?
A. At that time, they were in the custody of the Court.
Q. All right, sir. In regard to your search for checks

of a particular year, the fiscal years 1950, 1951, 1952 and 1953, what did you find?

A. I found only bank statements and canceled checks for the months of October, November and December of 1953. There were no canceled checks prior to that time.

Q. No canceled checks prior to October, 1953?

A. That is correct?

Q. Did you ever talk with Mr. O. P. Carrillo?

A. Yes, sir.

Q. When and where was that?

A. In his office in the San Diego State Bank building in San Diego, Texas, on April 13, 1954.

Q. Did you see anyone else there in the office at that time?

A. His secretary, a Miss Oliveira, Velia.

Q. Is she also known as Mrs. Verlon Bridges?

A. I understand she has since that time married Mr. Bridges, but she was not at that time.

Q. Was Velia Oliveira present at the conversation with O. P. Carrillo?

A. No, she was not.

Q. Where was this conducted?

A. In his private office.

Q. Did the conversation cover anything in regard to the Benavides Independent School District?

A. Very little.

Q. Would you give us what part of the conversation related to it?

Mr. Foreman: May we establish whether or not Mr. O. P. Carrillo—is this a conversation with Mr. Carrillo?

Mr. Wilkey: Yes, sir.

Mr. Foreman: We object as to any other defendant except, and ask that it be limited to, O. P. Carrillo.

The Court: Very well. The testimony will be so limited, and the jury is instructed that the testimony of this witness pertaining to conversations with O. P. Carrillo shall be considered only as evidence insofar as it pertains to the case aganist the Defendant O. P. Carrillo.

Q. (By Mr. Wilkey) All right, sir. You may relate that conversation there on April 13.

A. We asked—I was accompanied by Inspector Cauley at that time, and we asked him if he was attorney for the Benavides Independent School District and he said he was or had been. I don't recall whether it was past or present, but that is what he said and he said that he didn't care to discuss it at that time and would let me know later about discussing it.

Q. Did you have a subsequent conversation with him?

A. I did.

Q. When and where was that?

A. In that same office in the bank building at San Diego, Texas on the 15th of April, 1954.

Q. Who was present?

A. Inspector Roy H. Cauley and myself, and attorneys B. C. Wood and Manuel Raymond of Laredo.

Q. Tell us, if you will sir, what transpired, what took place, and what was said in this conversation with O. P. Carrillo and Messrs. Raymond and Wood?

A. Well, at that time we again advised who we were and what we were undertaking to learn. In other words, we told them we were postal inspectors making an investigation of alleged use of the mails to defraud, and an alleged scheme to defraud, and he being an attorney and having two attorneys present, the assumption was he knew his constitutional rights.

Mr. Foreman: I object to any assumption.

The Court: Objection sustained.

Please confine yourself to what took place, what you observed.

A. We asked him what his relationship was to the Benavides Independent School District board. He said that he was the attorney. He stated that he was also—he also had had a contract with the board whereby he would collect delinquent taxes for 15 per cent of the amount of delinquent taxes collected. He stated that this—that he had been employed by the board in February of 1954—wait a minute. As attorney in 1953, February, and resigned in February of 1954.

Q. May I have those dates of his service as attorney, as he told you?

A. Yes, February 1, 1953, he was appointed attorney for the board and he resigned effective February 28, 1954.

Q. All right, sir.

A. The contract to collect delinquent taxes at 15 per cent was dated January 2 of the same year, 1953.

Q. Was anything said about his compensation as attorney for the board and his total receipts as collector of delinquent taxes?